

# IMPROVING THE OFFICE OF ADVOCACY

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## HEARING BEFORE THE COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS SECOND SESSION

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## IMPROVING THE OFFICE OF ADVOCACY

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WEDNESDAY, JUNE 21, 2000

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The Committee met, pursuant to call, at 10:20 a.m., in room 2360, Rayburn House Office Building, Hon. Jim Talent (chair of the Committee) presiding.

Chairman TALENT. Our hearing today focuses on an agency that is of great importance to small business but remains to much of the outside world one of the lesser known agencies in the Federal Government, the Office of Chief Counsel for Advocacy.

I have called today's hearing to review the current situation at the Office of Advocacy and whether its efforts at independent advocacy are hampered by its relationship in both the Small Business Administration and the executive branch and, if so, what changes should be made to strengthen the office's role as a nonpartisan, independent voice protecting small business from regulatory excesses in the Federal bureaucracy.

In 1976 Congress established the Chief Counsel for Advocacy within the Small Business Administration. The initial purpose of the Chief Counsel was to complete a study on small business and its impact on the American economy. Subsequent to the completion of that study, the primary mission of the office was to represent the views and interests of small business before other Federal agencies whose policies affect small business.

In 1980 the duties of the Chief Counsel were broadened considerably when he was assigned the task of monitoring agency compliance with the Regulatory Flexibility Act, that statute which requires Federal agencies to consider the impact of proposed and final regulations on small businesses and other entities.

Nothing in the act creating the Chief Counsel spelled out that the Chief Counsel was to be independent of the President. Nevertheless, the authority to issue reports to Congress without submitting them for clearance by OMB and the ability of the Chief Counsel to file briefs in Federal court opposing the views of the executive branch led many in the small business community to conclude that the Chief Counsel should be an independent voice for small business in the executive branch.

Yet the independence of the Office of Advocacy often hangs by a slender thread. In past years the Office has seen Administrators use special hiring authority granted to the Chief Counsel in the statute creating the Office to impose the Administrator's personnel decisions on the Chief Counsel. In other instances the authority

and ability of the Chief Counsel to file amicus briefs in cases of extreme importance to small businesses has been called into question by various parts of the Justice Department.

Today the office operates under the terms of a statute that authorizes the Chief Counsel to file amicus briefs under the Regulatory Flexibility Act, and an Executive Order mandating that all disputes among executive branch agencies be resolved through mediation by the Department of Justice. In this hearing, the Committee is going to examine various mechanisms for enhancing the voice of small business within the government.

This is a nonpartisan issue, since the regulatory problems facing small business do not respect political party lines since, I may add, any tension between the Office and the executive branch goes back through the last at least three administrations.

Any enhancement to the Office of Advocacy must start from the proposition that it must be able to do what is best for small business. Our colleagues in the Senate believe that one solution is to provide the Chief Counsel with the line item in the budget, a line item that currently does not exist, which would enable the Chief Counsel to negotiate with the Administrator for resources.

The Chief Counsel's role in the government is unique, and the Chief Counsel should not have to rely on the goodwill of the Administrator to obtain needed resources. Clearly, this idea has some merit. I hope we can explore it in further detail today. But I am not convinced that the approach adopted in the Senate provides the Office of Advocacy with the necessary independence required to reach optimal effectiveness as the voice of small business. A separate line item in the budget does not eliminate what many perceive to be the primary problem with enhancing the role of the Office of Advocacy. The Office would still remain in the executive branch. It does not take a genius to understand that when a movable office, the Chief Counsel, meets an irresistible force, the President, the movable object moves.

In my view, a good solution would be to remove the Office of Advocacy from the auspices of the executive branch, but not establish it as an arm of Congress either.

There is another alternative: the establishment of an independent collegial body like the Board of Governors of the Federal Reserve or the SEC. These agencies are not subject to the regulatory authority of the executive branch.

For example, Executive Order 12,866, which specifies the regulatory oversight authority of the Office of Information and Regulatory Affairs, exempts these independent collegial bodies from the strictures of the provisions. Similarly, the Paperwork Reduction Act recognizes that special place in the bureaucracy by allowing them to override the OMB disapproval of their recordkeeping or reporting requirement. No executive branch agency like the EPA or the SBA has that power.

Finally, the commissioners of those agencies who were appointed by the President, confirmed by the Senate, do not serve at the pleasure of the President.

Today we have a panel of witnesses, all of whom are intimately involved with the small business issues and the function in the Office of Advocacy. I expect they will have diverse views on mecha-

nisms to improve the functioning of that office, enhance its capabilities as the final bulwark in the Federal Government against regulatory bureaucracy, and provide for a truly independent Office of Advocacy.

[Chairman Talent's opening statement may be found in appendix.]

Chairman TALENT. We are looking forward to the testimony of the witnesses but, of course, I want to recognize the Ranking Member, the distinguished gentlelady from New York for her opening statement.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Today we focus on ways to improve the effectiveness of the Office of Advocacy in the Small Business Administration. We will look at how the office can be a more effective advocate for small business but make technology more independent and giving it more control over its operating budget. The Office of Advocacy plays a very important role for small business. It works to reduce the burdens it faces from Federal policies, to research the economic impact of those policies, and to publish data on the contributions of small business to our economy. In a nutshell, Advocacy's goal is to encourage policies that support the development and growth of small business.

We all know the incredible job the Office of Advocacy has done to protect the interests of small business within the Federal Government. From saving small businesses \$3 billion in regulatory reform to implementing the SBREFA process, the Office of Advocacy has done whatever is necessary to protect this bedrock of our economy from sometimes overreaching Federal policies.

And as the voice for smaller firms, this office has stood firm to ensure that small business has the right to compete on a level playing field.

This hearing provides a unique opportunity to this Committee to take a good look at how we can strengthen Advocacy within SBA and help it continue to provide a powerful and independent presence for small businesses in America. As part of that effort, we must ensure that Advocacy is given the necessary resources, both financially and politically, to get the job done. Furthermore, we must provide more autonomy for Advocacy so that its motivations and decisions are truly independent; independent from agency policy, from politics, from special interests, from anything that might keep it from acting solely in the interests of small business. Advocacy must be free to act, without fear or favor, to resolve controversial issues in a timely manner.

And while we examine the best ways for Advocacy to achieve this independence, we should also consider any additional tools it might need and what new roles it might play to better serve small business.

We know, for instance, that Advocacy has an excellent track record in fighting for small business in areas such as regulatory compliance. Perhaps it also needs new tools to make agencies comply with Federal contracting standards. And maybe with more tools, it can reduce the sometimes overwhelming amount of paperwork that small business must wade through.

Everyone recognizes the need for the Office of Advocacy, even the agencies with which it works. We all have a vested interest in ensuring that Advocacy is well equipped to help small business in this evolving technology-driven economy, because we know that small business is our future.

Mr. Chairman, I would like to thank you for convening this hearing today. I would also like to thank the panelists for their testimony and for their commitment to protecting small businesses in our country.

Chairman TALENT. I thank the gentlelady.

Thank you for your comments and I in large measure agree with them. I think we are all pretty much in agreement that we want the Chief Counsel to be an independent voice. And the question is whether we need to do anything to enhance that.

And our first witness on that issue is the Honorable Jere Glover who is the Chief Counsel for Advocacy for the Small Business Administration. Jere, we are glad to have you here, as always, and grateful for your service. Let me just say this examination into the independence of the Chief Counsel's office shouldn't be taken by anybody as a reflection on your independence, because you brought a period of stability and effectiveness to that office that had been lacking, if I may say so, before you came on board. And I want to thank you for your years of hard work on behalf of small business and your appearance before the Committee today. So please proceed.

**STATEMENT OF JERE W. GLOVER, CHIEF COUNSEL FOR ADVOCACY, UNITED STATES SMALL BUSINESS ADMINISTRATION**

Mr. GLOVER. Thank you very much especially for those kind words. I am certainly pleased to be here and talk about the Office of Advocacy. As in the previous 36 times that I have testified before Congress since becoming Chief Counsel for Advocacy, my testimony is my own. It has not been shown to, cleared by, or reviewed by anyone prior to submission to the Congress.

There are a number of unique things about being Chief Counsel that makes this job fun and exciting. Let me just mention three of those. The first is the hiring authority; the second is the ability to make a difference; and third is the independence.

On the first, the Office of Advocacy was given special legal authority to hire and, quite frankly, fire its employees. This is unique in the government. It allows us to make sure that we hire people who are committed to small business, who share the Chief Counsel's commitment. It also allows us to hire the right experts, the right professionals to get the job done.

The second issue is the ability to make a difference. There are far too many jobs in government where at the end of your tenure you haven't made a real difference. That certainly is not the case with the Office of Advocacy. We have accomplished so much that I can't even keep up with all of it. The hardest thing that I have had to do in this job is to get the recognition the office deserves. You may recall that in 1995 Congress introduced legislation to zero out the funding for the Office of Advocacy. It was supported by some key leaders of this Congress. That attack on Advocacy was

turned away by a close vote, thanks especially to the former Chairwoman of this Committee, through her leadership.

A year later the office was strengthened, and new and exciting power was added to the office. My deputy, Kay Ryan, and I have worked for 10 Federal agencies. Five were commissions. I even worked for the Office of Advocacy before as Deputy Chief Counsel, and I have worked for this Committee. I have never worked in a place where I have been able to accomplish as much as I have here.

How do you measure Advocacy's accomplishments? Since that unfortunate congressional episode in 1995, we have tried very hard to measure our successes. Certainly the 22 letters attached to my written testimony—and I have another 10 that came in after we submitted our testimony yesterday—are indications of that.

I asked my staff on Friday if they would contact some of the folks we have worked with on regulations to send us a letter discussing the regulatory accomplishments that Advocacy and they together have done together. I wanted factual statements. This meant that the associations, their memberships, their organizations, thought enough of the Office of Advocacy in 3 days to send a letter.

Is that an appropriate measure? No. We have better measures of success. One of the most significant accomplishments for the Office of Advocacy has been to actually determine the regulatory savings from the Office of Advocacy's actions and from the Regulatory Flexibility Act. In 1 year, over \$5 billion. This does not include regulations that were not proposed, nor does it include regulations that were delayed and their impacts not felt by small business. The fact that we are able to measure this is something we are very proud of; not just that we did it but that we will be able to measure it in the future.

Your Committee, this Committee, should be very proud of these savings. Without judicial review of the Regulatory Flexibility Act, without the SBREFA panels, and quite frankly without saving the Office of Advocacy from being zeroed out, these savings would not have occurred.

Back to why the job is fun and why I wanted to do this job. One is great staff—and let me simply tell you I have the best staff in government; the authority to get something done for small business, and, finally, independence. With the exceptions of the businesses that I started and ran, I have never had more independence in a job than I have as Chief Counsel. Before taking this job, I was happy in the private sector. And I wanted to make sure that the SBA administrator, Erskine Bowles, and the President understood the independence of the job and that I would be taking independent positions. My Senate confirmation made it very clear that the Senate expected me to be independent, and I believe that I have been. No administration official, no Administrator of SBA has ever questioned or tried to compromise my independence.

How do you measure independence? Is that even the standard to use to measure the Office of Advocacy's accomplishments? I would rather offer regulatory savings for small business as a far better measure.

Returning to independence, is the measure the number of confrontations Advocacy has taken contrary to the administration? I have personally testified 36 times as Chief Counsel. Rarely am I



asked to come up and support the administration's position. To date, I have taken 25 positions that were different from the administration. Is that the measure? Or is it the 10 or so times where I have taken independent positions and later had the administration change its position and come over for small business? Is it the number of times that we fought with Federal agencies, or is it the number of times that we have had regulations changed to lessen the burden for small business?

My job is not to yell, but to be listened to. The earlier I get into a policy discussion at the agency or in Congress or in the administration, the better the outcome. My job is to provide data and information so that the agencies make informed decisions. Informed decisions virtually always come out to the benefit of small business.

Judicial review and the SBREFA panels have made a real difference. I have to achieve consensus at both ends of Pennsylvania Avenue. There are times that I take positions that no one else supports initially. I have taken positions that no one in Congress—that few in Congress, no one in the administration, and even most small business groups didn't support when I started taking those positions.

Bankruptcy and patent reform are issues where we got involved very early. There is a theoretical argument that more independence when supported from the executive branch is beneficial. But are we substituting a perceived additional independence for a dependence on a consensus within a collegial body, commissions, where a chairman must get at least one vote to sign off for every decision? Are you guaranteeing that there will be dissenting opinions in almost every decision? Are you creating a bureaucracy that is slow-moving and expensive?

There are a number of questions that I think should be answered before creating a new commission. And I have a number of questions which I would like to submit for the record concerning that.

In the Senate I testified, as I believe the other previous Chief Counsels had, that they had been independent. Where is the factual basis for the finding in staff discussion draft legislation at page 3 and 4, findings number 9 and 10, the current law does not provide the Chief Counsel with sufficient independence to protect the interest of small business, or that the Chief Counsel has not been able to fully execute without undue and unreasonable constraints? Neither I nor, to my knowledge, have the other Chief Counsels testified that they have been subject to such undue constraints.

There are a number of organizational problems which I think should be addressed. One is the line-item budget. The second is what happens between Chief Counsels. Clearly when the office is vacant, when there is not a Chief Counsel in place, there is no independence. You cannot ask a career employee to take the kinds of positions that a Chief Counsel, Senate-confirmed, takes. And that is clearly a problem. And of course, there is the question of the ability to administer the Regulatory Flexibility Act.

This is an issue that the law should certainly clarify. I think the most important thing about the Office of Advocacy is making sure there is at least one person, and hopefully a whole staff like I have,

that get up every day thinking, what can I do for small business today?

Chairman TALENT. Thank you, Jere.

[Mr. Glover's statement may be found in appendix.]

Chairman TALENT. Our next witness is Karen Kerrigan. Karen is the President of the Small Business Survival Committee. Please, Karen, go ahead.

**STATEMENT OF KAREN KERRIGAN, PRESIDENT, SMALL  
BUSINESS SURVIVAL COMMITTEE**

Ms. KERRIGAN. I am chairman now.

On behalf of the Small Business Survival Committee and its more than 60,000 members, I am pleased to have the opportunity to testify in regard to this important issue for small business. Increasing the effectiveness of the Office of Advocacy will yield tremendous benefits to America's small businesses and entrepreneurial sector as well as American taxpayers and consumers.

Again, I am Karen Kerrigan, Chairman of the Small Business Survival Committee. We are a nonpartisan, nonprofit small business advocacy and watchdog organization, headquartered here in the Nation's capital. We remain very optimistic about advancing initiatives for small businesses that have yet to be taken up by the Congress or signed into law by President Clinton, as well as accelerating an understanding within government about how it affects the success of the small business sector through regulation and legislation.

Our optimism stems from the fact that this Committee has done such a wonderful job in focusing its efforts on the issues that matter to small business. We are so pleased with your leadership, Chairman Talent. You have made a real difference for small businesses by focusing on issues are significant areas of concern or opportunity for entrepreneurs and their work force.

And, Congresswoman Velázquez, it has been a delight working with you and your staff. Let me applaud you on your recent New York Times op-ed to repeal the death tax. We sent that out to our entire membership. Your support has been just critical in building bipartisan support for repeal.

The topic of the hearing today is another example of your collected commitment to small business, and again we are pleased to be a part of this. Our organization has testified on the Office of Advocacy in the past. We are in support of their activities and we are eager to work with the Chairman and all members of the Committee and the Office itself to improve Advocacy with the goal of making it a more effective voice and entity for small business. The Office has been a positive voice for small business.

And the issue before us today is how do we best leverage their presence, their mandate, their resources to best serve the interest of small business, and is that possible working within their current structure? There are numerous occasions that we have interacted with the Office of Advocacy, from events such as the White House Conference on Small Business to issues such as telecommunications access charge reform, or new rules governing the commercial mail-receiving agencies otherwise known as the "PO Box dispute," and several environmental regs. Our interactions with Advo-

cacy have been positive experiences. They indeed have a tough job on their hands as the Federal Government's departments and agencies continue to crank out new rules and regulations at a very rapid pace, as noted in my written testimony, citing a report by the Competitive Enterprise Institute that over 4,500 new rules and regulations are in the pipeline this year. Of those, 963 will have a notable impact on small business.

Upon a review of the statute that established the Office, I noted that the Office had wide discretion in terms of their activities they could implement or pursue for interests of small business within the government. From conducting research as they currently do, to making legislative and other proposals for alternate tax structure; doing the same for eliminating excessive or unnecessary regulations, and developing proposals for changes in policies and activities of any agency of the Federal Government.

There really appears no limit—nonfinancial, that is; Jere is sitting right next to me here, so I have to watch what I say—to ensure that the Office of Advocacy carry out its mandate and goals of helping small business.

From my review of the Office of Advocacy's last annual report to the Congress and President, as well as observing activities over the past several years, it appears that their function has really tilted heavily toward addressing small business concerns after a rule has entered the pipeline and determining whether agencies are adhering to SBREFA. This certainly is their role, along with convening panels to hear the concerns and receive input from affected small businesses.

The Office has made a difference, albeit with varying results, in the convening of these panels to ultimately impacting rules and educating the agencies of their obligations under SBREFA. While we believe this is productive work, our preference, and we believe the preference of small business, would be to devote a share of the staff's time working on Capitol Hill to push for what small businesses really want, and that is regulatory reform and relief, expending more effort on the front end to enact meaningful reform. And supporting Members of Congress who have sponsored legislation while publicly endorsing their efforts would relieve Advocacy and, more importantly, small businesses from addressing these issues on the back end.

We believe Advocacy's support would carry tremendous weight on the Hill and with the President in current attempts to pass broader regulatory reform legislation. We believe it is entirely appropriate and necessary for Advocacy to devote staff time and resources working with the business community to advance the recommendations of the White House Conference on Small Business not only as it relates to regulatory reform issues but also legislation that was desired by delegates to the Conference on tax, labor—there is a whole host of issues and health care. This list, at least the top 10, are a blueprint for what should be Advocacy's agenda and priorities for the year.

Mr. Chairman, I list other recommendations for the office—some of them managerial, some practical—in my written testimony, and pose questions regarding Advocacy's lack of action or activity on some small business issues currently being debated on Capitol Hill.

I have also asked our small business leaders for their input and recommendations about how to improve Advocacy, and that feedback is just coming back to our office. So I hope that we can have the opportunity to forward those to you as well.

As a small organization ourselves, we understand that resources are an issue here. We grapple every day on how to target our resources to make a real difference for small business. But we also realize that if we are always on the defense. We are basically losing the game, which is why I encourage Advocacy to pursue a strategy of offense as well.

Lastly, in terms of the draft proposal that would pull the office out of the Small Business Administration and make Advocacy a three-member commission, SBSC certainly supports efforts to make the agency more independent. After all, most small businesses aren't thinking about Republicans versus Democrats when they are trying to make payroll every day. The total independence of the Office of Advocacy has tremendous appeal to SBSC. Since we only recently have been able to review the draft proposal and the concepts in general, we are only at the early stages of discussing what this would mean for small businesses.

I cited questions in my written testimony that we are asking ourselves and that we are asking our small business leaders. Reaction, initial reaction from our small business leadership has been from extremely positive to somewhat cynical. I do have ardent supply-siders that belong to my organization. There is that cynical view of government and what it actually can do for small businesses.

We certainly believe the proposal is worth our time and attention, and again we are exploring with our small business leaders this option. Certainly the Office needs a higher profile. We are in total agreement that politics should not restrain them from pursuing the interests of small business.

I look forward to discussing these issues with you and the Committee and to find solutions so that all of us may better serve those who represent America's small business sector. Thank you again, Chairman Talent, for your ongoing leadership and creativity. I look forward to answering any questions from you or other members of the Committee. Thank you.

Chairman TALENT. Thank you, Karen. I am sure we'll have lots of questions.

[Ms. Kerrigan's statement may be found in appendix.]

Chairman TALENT. Our next witness is Daniel Mastromarco who is President of The Argus Group in Alexandria, Virginia. I am mixing up the order I am calling on people just to sort of surprise them a little bit.

#### **STATEMENT OF DAN R. MASTROMARCO, PRESIDENT, THE ARGUS GROUP**

Mr. MASTROMARCO. Okay, I will give Mr. Morrison's testimony for him. I thank you. With the legacy here left by Jere and Karen, who yielded such time as they consumed, I should have plenty of minutes remaining.

Chairman Talent and members of the Committee, I ask that my full statement be admitted into the record. I appreciate your holding this hearing and thank you again, and your able staff, particu-

larly Barry Pineles, for wanting to improve the environment for Advocacy.

Let me begin by offering a rather blunt observation. It is doubtful we are going to read about this hearing in tomorrow's Washington Post. It is even more doubtful that you would find that a revelation. Daily battles which pit Federal agencies against small firms are more fun to read about than procedures for good government that prevent these battles from occurring. But if observers truly appreciated the potential of the Office of Advocacy, this hearing would dominate the front page.

As important as many individual fights are, they are merely skirmishes in a cavalcade of battles in an interminable war as government regulates more than any period in our history. I can see, for example, on the chart, that Jere had pointed out, savings of \$83 million from the Department of Treasury alone. This is approximately .4 percent of the amount of regulatory burden that the Internal Revenue Service imposes on the American people, approximately \$250 billion.

We must never be so embroiled in a fight that we forget about the battle plan, we forget how to fortify our defenses, and forget what we need in our arsenal.

My comments do not critique any steward of Advocacy, although I am kind of surprised that every letter that complimented the Office of Advocacy seems to be dated June 20th. On many issues Jere has done a fine job. He has surrounded himself with able staff such as Russ Orban, Charlie Ou, Ken Simonson, and others. These individuals are paid partly in inspiration.

Mr. Chairman, Advocacy serves a function that cannot be fully served by the private sector. I know this because I have been an advocate in the private sector and I have also spent 6 years on the staff of the Office of Advocacy. But to perform it well, the Chief Counsel should not have to choose between being a cheerleader on critical issues, a humble plaintiff, or an unemployed political operative.

Does anyone really think he has true independence today? Start with the fact that he or she is nominated by the President, serves at his discretion, listens to recommendations made for his staff, and is subservient to the administrator of the SBA fiscally and authoritatively, whose job is to enforce the President's policies.

The counterargument is that an insider can better influence policy. It is like saying the fox is guarding the hen house, but the fox can understand the way the other foxes think and therefore can prevent the attacks. The chief advocate is a poor cousin influencing broader administration policy, however.

To show the bipartisan nature of the problem, President Bush went one step further than politicizing the Chief Counsel; he made the equally political decision not to fill the slot with a confirmable candidate for years. Shockingly, no one at the White House saw the rush to have an independent advocate interfering with regulatory policy. As a result, small business policy defense foundered, research lagged behind, talented people were replaced by appointees who could not find a home in a "real agency". It lost direction, it lost respect, it lost morale, and it damn near lost its appropriation,

as few in Congress could remember its capabilities or could envisage its proper role.

Death by politicization is a bad fate for the Office, but death by neglect may be worse.

So what do we have to do to make the Office a center of excellence where the best and the brightest go to advocate sound policies for small business; as Jere said, each day waking up and determining what they can do to help small firms? Your draft legislation and that proposed by Senator Bond seek the right result: true independence. It is not a sufficient condition, but it is a necessary condition. Both recognize organic legislation on which the Office is now built won't serve to guarantee this result. But neither legislative alternative is perfect. The Senate bill only shifts masters from the administrator to the OMB, far from a firewall, as Senator Bond said; it leaves the Advocate against the wall and in the line of fire.

Advocacy should be given legal authority to issue certifications or determine if the Initial Regulatory Flexibility Analysis was adequate. Advocacy staff should also be physically separated from the SBA. They share nothing except a common roof.

Moreover, whether a Commission or a Chief Counsel approach is adopted, the Presidential appointments must be subject to Congressional oversight with a definitive term of office.

Point 2: Allow the Chief Counsel to hire professionals without going through the normal competitive hiring procedures.

Point 3: Increase authorizations of funding for intramural and extramural economic research and for Advocacy. Ironically, Members of this Committee, the Internal Revenue Service used to argue with appropriators that with additional funding it could save taxpayers billions of dollars through better enforcement tools. It worked. If the Congress agreed to fund the Office to the degree it saves resources imposed in the private sector, it would be flush with capital.

Point 4: Enact regulatory improvements. There is ardent interest in giving Congress more authority to oversee rulemakings, increase the review panels, and require public benefit-cost analyses. View these regulatory changes as part of an overall package that strengthens the weapons of Advocacy.

Point 5: Ensure better coordinated research functions. More creative means should be employed to leverage the resources of other agencies, for example, through the use of fellowships. Economists must be assigned to support advocates instead of performing research that is academic only.

Last, stop funding regional advocates. Ever wonder what a regional advocate does? They are like the three people standing at a road construction site while one digs.

Pay the Office and its mission the highest compliment. Engross yourselves not only in the question of how many dollars should be spent, but in a more essential question: How might we structure the Office to achieve its goal? Think of yourselves as authorizing a defense bill, but this time it is the defense of the American entrepreneurs that is at stake.

Chairman TALENT. Thank you Mr. Mastromarco.

[Mr. Mastromarco's statement may be found in appendix.]

Chairman TALENT. Jim Morrison and senior policy adviser of the National Association for The Self-Employed. Jim.

**STATEMENT OF JAMES MORRISON, SENIOR POLICY ADVISOR,  
NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED**

Mr. MORRISON. Good morning. And thank you Mr. Chairman, Ranking Member Velázquez, for inviting me here to appear here today. I am James Morrison, the Senior Policy Advisor for the National Association for the Self-Employed. On behalf of all our members and the Nation's 15 million self-employed, we commend the Committee for holding this hearing. We again commend the Committee for its distinguished record on regulatory oversight throughout the last several years on behalf of small business, including the very thoughtful proposed legislation that is before us this morning.

Today's hearing focuses on the Office of Advocacy. Can it become more effective? Should it be more independent? By and large, the Office has been quite effective when it has been led by strong Chief Counsels. Most years it comments on dozens of proposed regulations, getting changes in many of them, and even getting some of them withdrawn altogether. Its economic databases are the best anywhere on small business. They have been very helpful in setting economic policy and developing legislation. Its technical studies have been invaluable in responding to regulations. Most small business regulations that have dealt with the Office of Advocacy, including our own, have a very high regard for it.

Can it be improved? Sure. Advocacy's core mission is finding excessive and burdensome regulations. It gets its authority to do this from the Reg Flex Act and SBREFA. Strengthen Reg Flex and SBREFA, and Advocacy can do more. And I think the time has come to do this, because in recent years we have been hitting against some of the limitations of those laws.

In the recent American Trucking Association case, the appeals court refused to give so-called deference to Advocacy's views on how an agency should comply with the Reg Flex Act. In fact, the court ruled very much against Advocacy's views on the issues in that case. That is rooted in a technical problem with the way the Reg Flex Act and SBREFA were drafted. The Committee's proposed bill I think very effectively solves that problem. It authorizes Advocacy to issue regulations governing agency compliance with Reg Flex and SBREFA and it requires agencies to give great weight to Advocacy's views, which means the courts will too. These are very good provisions in the draft legislation and we urge the Committee to approve them.

That recent ATA decision also highlighted a loophole in the Reg Flex Act that we hope the Committee will be able to close. Agencies are not required to weigh an indirect impact of their rules on small business. So in this case, the EPA could hand its rule off to the States to implement and ignore the subsequent effects on small business because the results were "indirect."

Indirect impacts that agencies can readily foresee or that they hear about as they draft their rules should be included in the analyses required by Reg Flex and SBREFA. The Advocacy review panels that were created by SBREFA have been a very helpful innovation. We hope that the Committee succeeds in its efforts to bring

the IRS under the review panel process. That would increase Advocacy's effectiveness.

Two other SBREFA innovations were the National Ombudsman and the Regulatory Fairness Boards. These were placed under the SBA administrator, which has proven awkward. The SBA administrator is not otherwise engaged in the overall Federal regulatory process. Advocacy is. The Committee's bill would shift those entities to Advocacy. That is a good idea and we support it.

We would also like to see a renewed emphasis on the Reg Flex requirement that agencies review their existing regulations every 10 years. As the Committee knows from its hearings on this issue, very few agencies have even lifted a finger to comply with this law. Advocacy could be more effective if it had new tools to crack down on this abuse.

And no discussion of Advocacy's effectiveness would be complete without consideration of its budget. Instead of rising to meet the new obligations created by SBREFA, Advocacy's budget actually has declined. In 1991 the Office had 79 professionals. Today it has 47. They attempt to police about 80 Federal agencies. In 1999, those agencies spewed out over 8,000 proposed and final rules that were sprawled across 70,000 pages in the Federal Register.

Advocacy helps a broader swath of small business than anything else that SBA does, but it gets less than one-half of 1 percent of SBA's budget. And that is down, too, by the way, from the 1½ percent that Advocacy used to get, one-half of 1 percent.

Today the Committee is also considering the question of Advocacy's independence and whether it should approve draft legislation replacing the current Office with a three-member commission. The commission would have some advantages. We would probably not see vacancies among the commissioners that last over 3 years, as we have seen with the Office of the Chief Counsel. Advocacy's clout might approach that of OMB's, at least within the subject area of small business.

Advocacy would have more freedom to set its own policies without reference to White House and administration preferences.

But there are also disadvantages. Advocacy increasingly gets into the regulatory process early, before Federal Register publication with many agencies; notably, EPA and OSHA, the review panel agencies, but other agencies as well. To some extent, this reflects a level of trust and mutual respect that comes from having senior administration political appointees talking to one another. Taking that away by removing Advocacy from the executive branch would make the process a great deal more adversarial, a lot more formal and full of lawyers, and a lot more time consuming. Crucially, it would probably spell the end to informal Advocacy involvement in agency rulemakings prior to the Federal Register publication except where that early contact was mandated by law.

If the commission exercised any sort of veto over executive branch regulations, there would certainly be constitutional issues raised regarding the separation of powers. Even without such a veto, an independent commission's involvement in Advocacy's review panel process at EPA and OSHA could be legally problematic.

A commission might be less political than Advocacy, but political influences would never be banished entirely. The commissioners



would be political appointees with allies and loyalties. They would inevitably think about life after the commission, including future political activities.

The setup of the commission raises other concerns. Under the current setup, Advocacy needs one strong leader. Under the commission, it would need at least two. Most independent commissioners, most independent commissions that are effective in Washington, have large staffs dealing with highly technical regulations that the commissioners themselves promulgate and administer, covering specific industries. This is the pattern at the FCC, the NRC and the SEC, for example. But such would not be the case with this proposed commission. Rather, this commission would be constantly trying to stay current with other agencies' regulations promulgated and administered by them, regulations that span the entire range of American business and regulations that flow at firehose rates.

There is no parallel in government for such a commission. And absent strong leadership, it could descend into confusion. Yet the structure of the commission doesn't really communicate decisiveness. Having every major decision determined by a majority vote of three lawyers in a scheduled meeting does not to me suggest an ability to set crisp priorities and to react rapidly. Add to this an inherently adversarial relationship with the other agencies—well, it might work. It is an interesting idea, but I think it is a stretch.

It would also be a stretch for many groups in the small business communities to support a new agency. After years of calling for smaller government, asking for a new agency because it suits small business could expose these groups to charges of political hypocrisy. Yet, ignoring the bill would make the small business group seem uninterested in the problems of overregulation. Not a great position to be in.

Our recommendation would be to enact incremental changes that would strengthen Advocacy's effectiveness now, without foreclosing future options like the commission. And let's keep working on the commission idea.

The changes we suggest are giving Advocacy a separate authorization along the lines of the Senate-passed bill; mandating that Advocacy's views be given great weight by other agencies as in the commission bill; authorizing Advocacy to issue regulations governing agency compliance with Reg Flex and SBREFA, as is also in the commission bill; closing the indirect impact loophole; passing H.R. 1882, which would put IRS under the review panel process; placing the Ombudsman and Regulatory Fairness Boards under Advocacy, as again in your commission bill; expanding Advocacy reviews of existing regulations under section 610 of the Reg Flex Act; and assuring that Advocacy's appropriations are adequate for its mission.

Mr. Chairman, that completes my testimony. I will be happy to take any questions.

Chairman TALENT. Thank you Jim.

[Mr. Morrison's statement may be found in appendix.]

Chairman TALENT. And now the suspense. There are two witnesses left. Todd McCracken, President of National Small Business United.

**STATEMENT OF TODD McCracken, President, National  
Small Business United**

Mr. McCracken. Thank you, Mr. Chairman, it is a pleasure to be here today. Again, my name is Todd McCracken, I am President of National Small Business United. I am very happy to be here to share our views about improving the SBA's Office of Advocacy in ways that that office could be further improved and strengthened. This office is, we have all said today, is crucial to the small business community and it has performed at A consistently high level, particularly when a permanent Chief Counsel is in place. However, we believe it is time to strengthen the Office of Advocacy and further raise its profile within the Federal bureaucracy and outside.

The Chief Counsel for Advocacy has always been intended and perceived by most to be an independent voice for small business housed within the SBA. But that independence doesn't actually exist in the law. This tug between legal reality on one hand, and perception and expectation on the other, is one way that the office is a unique institution within the Federal Government. Certainly maintaining this independent role while being a Presidential appointee within an agency is one of the ongoing difficulties of this job.

In the past, we have always believed that this balancing act produced the best outcome for small business. In previous testimony before this Committee, we have not advocated for increased independence for the Chief Counsel. After all, we believe Chief Counsels could be more effective in advocating for small business in the regulatory process if they are perceived by agencies as part of the administration rather than an outside bomb thrower.

Yet a very healthy degree of autonomy is also called for, for the Chief Counsel to have the confidence of Congress and to ensure that the Chief Counsel does not feel pressured to just go along with another agency within the administration.

Balanced properly, this situation can create a win-win scenario that everyone seems to be after these days. But this balance is a difficult one that every Chief Counsel must seek to maintain but which they cannot maintain alone. They must have an engaged and supportive partner in the SBA administrator. Over the last 25 years they seem to have done well in that regard.

We would be kidding ourselves to think that there haven't been tensions. We believe the past and present Chief Counsels have managed to work through most potential problems in a reasonable way. Nevertheless, events of the last few years have convinced us that the balance we have relied upon may have moved too far away from independence. The Office has had to fight to maintain funding within the agency and has been potentially affected by personnel freezes stemming from problems in the rest of the agency. Also, SBREFA has given greater responsibilities to the Office, which would put them in a somewhat more adversarial position with the other agencies.

Given these and other developments, we have broken with our past stand and feel it time to impart a greater degree of independence to the Office. The Senate Small Business Committee has included in the SBA reauthorization bill a proposal to give the Office of Advocacy greater independence, primarily by requiring a sepa-

rate line-item appropriation for the Office. We fully support this approach and hope this Committee will move forward this year to also adopt this language while we continue to debate and explore other alternatives for strengthening the Office. There is nothing in the Senate proposal that would substantially contradict other proposals, should they be enacted some time in the future.

The Committee staff has furnished us with a copy of a draft bill which would create a Small Business Advocacy Commission. To the extent that the goal was to create a fully independent agency advocating for small businesses, this is an excellent bill. The lines of authority are clear and well thought out, and the creation of three distinct bureaus is a very sensible step, recognizing the key importance of these roles within the Office.

But I believe the small business community should be very clear about what its goals will be in embracing such a change. There is little doubt that the agency's job would become simpler with fewer inherent conflicts, though as Jim pointed out, the commissioners will have their own political axes to grind and these biases will undoubtedly affect commission decisions and fewer of the balancing acts that I described before. This clarity of purpose might make us all feel better and more confident that there is no, or at least less, administration influence on the Office, but will it make the Office more effective in carrying out its duties on behalf of small business?

We are not yet convinced that the benefits of full independence completely outweigh the benefits of having an advocate within the administration. The Senate approach would move the Office closer to independence without this fundamental realignment. It would seem to us wiser to begin with this more incremental approach, while recognizing that a more fundamental overhaul could prove beneficial in the future.

The SBA Office of Advocacy is one of those inspired functions of government that actually works pretty well. However, it is now time to improve and strengthen the Office. We believe that the Senate bill is the best first step in this direction and should be enacted in the short term.

Chairman Talent's bill has much to commend it as well, especially if we reach the conclusion that the more modest measures of the bill have not worked. But first I believe we should give those changes the trial period they need while continuing the debate about how we can create a more effective Office, and how we weigh the relative benefits of full independence. I thank you for the opportunity to be here this morning.

Chairman TALENT. Thank you, Todd.

[Mr. McCracken's statement may be found in appendix.]

Chairman TALENT. And our final witness is Keith Cole who is a partner—I am not going to try and pronounce everybody's name in the firm. Keith, thank you for being here.

**STATEMENT OF KEITH COLE, PARTNER, SWIDLER BERLIN  
SHEREFF FRIEDMAN**

Mr. COLE. Thank you, Mr. Chairman, members of the Committee. My name is Keith Cole and I am a partner in the law firm

of Swidler Berlin Shereff Friedman, located here in D.C. I very much appreciate the opportunity to testify at today's hearing.

I would like to state for the record that I am not testifying today on behalf of my law firm or any particular client but solely on my own behalf. My testimony is based on my expertise as a former regulatory affairs counsel to the Senate Small Business Committee and my experience in the private sector since leaving Capitol Hill.

While in the private sector I have followed closely the Office of Advocacy's efforts to implement and oversee agency implementation of the Regulatory Flexibility Act. Over the past 5 years I have been involved in a number of rulemakings which the Office of Advocacy has actively participated in. These include both high-profile rulemakings, like the EPA's rule revising the Ozone and Particulate Matter Clean Air Standards, as well as other less controversial rulemakings.

My overall impression is the Office of Advocacy does a good job raising with the various Federal Government agencies the deficiencies of the Reg Flex analyses prepared by these agencies. I have observed as a current advocate, Mr. Glover, has pursued some of these issues to the very highest levels of the executive branch in an effort to make the voice of small business heard, and I believe we should thank Mr. Glover for those efforts. However, I have also observed that the Office of Advocacy must to some extent pick and choose its battles. Part of this is due to resource constraints which face any organization, but resource constraints alone are not the full story.

As an office within the Small Business Administration, the Office of Advocacy is part of the administration team. And, as others have noted, there is no current statutory basis for the independence of the Office.

When other players on the administration team propose regulations that run counter to the interest of small business, or shirk their duties under the Reg Flex Act, the Advocate faces conflicting pressures. Does his loyalty lie with small businesses or with the administration team? And even if his loyalty is truly with small businesses, without a statutory basis to protect the advocate's independence, each advocate must consider the long-term effects of pushing too hard on behalf of small businesses in any particular rule making.

As an advocate from within the team, the Office of Advocacy's powers depend to some extent on remaining part of the team. Will the other players on the administration team continue to agree to work with the advocate in future rulemakings if the advocate goes beyond what the administration considers to be a "reasonable" amount of advocacy for small business.

Looked at from this perspective, it may be in the best interests of small businesses for the advocate to occasionally pull some punches. According to this view, in the long run, the interest of small businesses generally will be maximized if the advocate would not push too hard or too often for the interests of particular small businesses.

While SBREFA has increased the tools available to Advocacy, it has not reduced the conflicting pressures facing the Office. In fact, the strength and tools provided by SBREFA may in some ways act

to increase the pressures on Advocacy. Especially in high-profile situations, the advocate continues to risk a long-term loss of influence on the administration team if he or she pushes the small business agenda beyond a certain point.

The chief lesson that I have learned over the last 5 years is that given the lack of statutorily defined independence of the Office of Advocacy, and its hybrid role in trying to be an independent advocate while remaining a team player, there are always going to be tensions between the interest of small businesses affected by a pending rulemaking and the long-term interest of the small business community in having an effective advocate in executive branch rulemakings.

Let me now turn to comment on the discussion draft. First, Mr. Chairman, let me commend you and your staff on the work that has gone into this document. The draft clearly reflects many hours of research into the formulation of other independent commissions and earlier examples of the transfer of functions between governmental agencies. There are many lessons to be learned from these examples and the draft, I believe, does an excellent job of incorporating that experience into this effort.

As to the reorganization of the Office of Advocacy as proposed in the draft, I believe that with two important caveats, enactment of this legislation could bring significant benefits to the small business community. I don't believe we would see drastic changes overnight, since the Office of Advocacy functions fairly well today. However, over the long term I believe the benefits will be readily apparent, provided two conditions are met: First is adequate funding, and second is finding the right people to serve on the commission and its staff.

Let me elaborate on my reasoning in a little more detail. First, I believe that the structure of an independent commission will go a long ways towards eliminating the conflicting pressures felt by the current Office of Advocacy. The discussion draft would provide the statutory independence for the commission that the Office of Advocacy currently lacks.

With its independence firmly established in the statute, the commission will be free to zealously advocate the cause of small business in all rulemakings, subject only, of course, to resource constraints. By removing the advocacy functions from the Small Business Administration, the draft allows the SBA to focus on what it is good at, while providing the commission with a more focused mission on behalf of small business advocacy.

Second, the draft establishes several new important functions for the commission, and I can go into those in more detail during questions.

Third, I believe that the transfer of the duties of the regulatory enforcement ombudsman to the commission is appropriate. The ombudsman was established with great hopes by SBREFA in 1996; however, I must say that I have been disappointed by the effectiveness, or lack thereof, of the ombudsman to date. I view this as a troubled program in need of reform, and I believe the changes made by the draft would bring new life and energy to the position of ombudsman as well as to the Regulatory and Enforcement Fairness Boards.

Lastly, I believe that the expanded rights of the commission to file comments and participate in agency adjudications will allow the small business community's voice to be heard in areas where it has not been heard before.

While there are a number of minor issues that I would want to work on with staff prior to its enactment, overall I think the discussion draft is a big step in the right direction. I think the concern about the commission's access to information and ability to engage early on in agency decision-making can be resolved through proper drafting of the provisions of this legislation.

I would urge you to introduce it and move for its early enactment. However, I want to reiterate that resources and people will be keys to making the commission a real success. I don't know of any way for Congress to legislate the quality of the people who serve on the commission, but I want to stress the issue of resources.

First, I would suggest working with the Parliamentarian and the Appropriations Committees to ensure that the commission is funded from the same Appropriations Subcommittee, that is, Commerce-State-Justice, that currently funds the Office of Advocacy within SBA. This would minimize but not eliminate the find, quote, "new funding" for the commission.

Second, I would work to get a strong buy-in by the appropriators on the concepts of the commission. And finally, I would consider whether any independent funding mechanisms could assist in providing the commission with the resources adequate to fulfill its mission.

Thank you very much, Mr. Chairman.

Chairman TALENT. Thank you, Keith.

[Mr. Cole's statement may be found in appendix.]

Chairman TALENT. We will go to questions now. I appreciate all the testimony and the comments, some of which were very provocative.

Let me go a little bit into this. Jere, how many Chief Counsels were there during the Bush administration?

Mr. GLOVER. There were two Chief Counsels that served at some time. There were a number of acting Chief Counsels that wandered through.

Chairman TALENT. Wandered through. I think I should have said "acting chiefs or Chief Counsels." I think there are—staff tells me there were five. It is interesting that if we ask people who were around in that period of time, they probably would have a difficult time. They would probably disagree as to exactly how many there were because, as you said, they just wandered through.

Mr. GLOVER. We chose not to put their pictures on the wall in the office. The budget for frames didn't permit for that.

Chairman TALENT. So basically the whole administration, that there really wasn't a Chief Counsel for Advocacy.

Mr. GLOVER. Frank Swain held over for a period of time, and the last 6 months there was someone appointed.

Chairman TALENT. Frank was a good fellow, and he was only in there in the first few months and then he was gone.

Now let's go over amicus briefs. I understand your point about if you negotiate hard with the Department of Justice, you often

don't need to file an amicus brief. And in all these areas I want to reiterate what I said at the beginning: that you, with your independence and strength, have brought real meaning I think to the Office. But obviously you see—you are going to see the line I am getting at here. The question is whether you have done it despite the institutional arrangement, whether you have overcome that; or done it because of the institutional arrangement. My argument is that you have done it despite it, really. Amicus briefs, you filed one in the Northwest Mining case; 1998, right?

Mr. GLOVER. Right.

Chairman TALENT. Before then, there was one other instance in 1994 when you threatened to file one. It did get some changes from the Department of Justice. That was in 1994.

Mr. GLOVER. From the Federal Communications Commission.

Chairman TALENT. That is right, the FCC. Then according to our research, there was one other time when the Chief Counsel was going to file an amicus brief, that was in 1986. What happened?

Mr. GLOVER. There are people who know more about that than I do. My understanding is he got a lot of pressure and pulled back.

Chairman TALENT. He withdrew it under mysterious circumstances. But what we were told is that he was informed he could either file the amicus brief or continue as Chief Counsel, but not both. And surprisingly I guess, or not, he decided to withdraw the amicus brief, which I don't blame him for that.

Mr. GLOVER. The Department of Justice certainly raised similar arguments with me. And I said—they raised some very interesting arguments. I said, those are wonderful arguments; why don't you brief them?

Chairman TALENT. Exactly. I think if you have a strong enough person and he has close enough ties to the White House, that almost any institutional arrangement—it doesn't matter whether we have—because, see, if you have—your objections to a commission, for example, that it would be hard to pull people together and you would have to have the other commission members to go along—well, if you have a strong person as president of the commission, that goes.

Mr. GLOVER. I have worked for a bunch of commissions. And I will tell you that the talent of commissioners varies, and the ability to make decisions is something that is frightful.

Chairman TALENT. What I am getting at, after looking at this, is the things that make the current arrangement work tolerably would make a commission arrangement work very well. On the other hand, when you don't get a strong Chief Counsel or even if they are a strong person, if they don't have the necessary ties to the White House, then this current arrangement doesn't work at all, whereas a more independent arrangement would work. The fact of the matter is that even under your stewardship, only one amicus brief has been filed.

Mr. GLOVER. That is correct.

Chairman TALENT. Now the Department of Justice is always, I mean, by hypothesis, going to be defending the government's position. So they are always going to be arguing or trying to mediate you out of filing an amicus brief.

Mr. GLOVER. Absolutely.

Chairman TALENT. The very fact that there is a mediation arrangement seems to me to be a compromise, to some extent, of your independence, the fact that you have to go through this mediation, even if you don't want to.

Mr. GLOVER. Let me make this clear. There is a mediation procedure for other Federal agencies. We don't go through that. I have simply said that is not appropriate for us. We do notify the Justice Department after we have made a decision to go forward. As any lawyer of the court, you have an obligation to try to resolve disputes short of litigation and as efficiently as you can. And we try to do that. And we have told the Justice Department, and we have told the Federal agencies about our decision to go forward—we will then discuss it with them, and if we can resolve it, we will. But we do not go through the mediation procedure, we don't think that is appropriate.

Chairman TALENT. The statement you made in your testimony, which I think is a little bit revealing, and the fact that you make it because, as I said before, you have had a very strong voice, an independent voice on behalf of small business, you say at any time—I should add further that any time the Chief Counsel has to disagree publicly with the Administration or the Congress, the disagreement must lack acrimony to ensure that the doors remain open to future policy deliberations, often on the same issue.

Now I certainly agree, when you have to disagree publicly with the Congress, it should always be that way. We are, in no way, here debating the Office of the Advocacy from the Congress. That is an entirely different thing. But I am not sure, Jere, I always want your disagreement to lack acrimony. I hear what you are saying. We had a hearing, I guess, now a month or 2 ago where Mr. Mikrut came here from the Treasury Department to defend the Department's position regarding installment sales and regarding the cash versus accrual basis. And we had—the members of the committee on both sides of the aisle had a number of disagreements with Mr. Mikrut, which did not lack acrimony, and appropriately so.

What I am trying to point out to you, and maybe some of the other witnesses here, as you know, while mediation and compromise and negotiation is a good thing, sometimes it is good to show a little fang, too. And you can do that, I agree with you, it is very difficult for you to do that if you are in the same administration subject to the same authority. Even you, much less a weaker person. Go ahead and comment.

Mr. GLOVER. Well, there is certainly a number of instances, and you mentioned one in which, shortly before your hearing, there was lack of acrimony between my conversation with him, and quite frankly, with his bosses. Certainly that was not acrimonious at all. It is, quite frankly, quite poignant and quite specific. We do have those conversations, obviously, with the head of OSHA. For example, we make sure that in the fight for ergonomics and for the health and safety rule, we have been very tenacious and we are very tenacious. We are not mean spirited. We try to always be fair in our presentations. We try to argue from a factual basis, from a legal basis. And we, quite frankly, don't issue a lot of press releases



when we win because that doesn't help the next battle, the next fight.

So, to some extent, when we talk about recognition of Advocacy's accomplishments, we don't go and brag when we finish a fight. But there are tenacious fights, those that are on my staff know there is probably no one more tenacious in a battle than Kevin Bromberg with the Environmental Protection Agency. So I don't want to overstate the fact that we wish to have good, pleasant relationships. That is not always possible, and quite frankly, we often do end up very, very tough.

Chairman TALENT. I will say this also to the other representatives of the small business associations here, I'd like a Chief Counsel who is in a strong enough statutory position that the heads of these agencies want to avoid acrimony with you. I like the position where they say to themselves, you know, what if we go ahead with this without calling in Jere Glover, and maybe modifying it if he asks us to, he is going to call a press conference and rip us up one end and down the other, and we are going to look pretty bad.

And we don't have that situation now because as a practical matter—I believe you have pushed it as far as you can push independence, Jere. I think you have done about as good a job as you can do. You had a list of accomplishments, and I am not going to quibble with them. I just am very concerned, and historically, there are times we have not had strong Chief Counsels, and we have all seen what has happened there. Even when you do, there is a limit to what you can accomplish, that is what I am getting at.

The bone I have got to pick with you is when you say there is no evidence and no testimony to support the commission idea. We have had some here today. I could come up with evidence if I wanted to call a whole bunch of witnesses over, to some extent, with this Administration and the past administrations as well, about how people get appointed and how decisions are made. And I want to have a series of hearings hauling out all the dirty linen.

I guarantee you, and I think you know I could get that stuff on the record. That isn't my style. I don't want to embarrass people. And I like to recognize when people do a good job as you have done. Everybody familiar with this agency knows the extent to which there has been interference, especially by past administrations.

I just went through what happened in the Bush administration. We went a whole administration without a Chief Counsel, basically. So that evidence is there. The question is my judgment, whether this idea, the commission idea for fixing it, introduces more problems in terms of depriving you of flexibility and the rest of it than it does assisting it.

Mr. GLOVER. I mentioned I prepared a number of questions and comments which I would like to submit for your staff, because I think it is a staff discussion draft, and I think it is important to resolve some of those issues if we go forward with the commission. But I think—and if I thought a commission were better—for small business, I would be very comfortable and very happy to say so. Perhaps I am, by nature, by personality, too independent to the idea of me having to get other people to agree with what is right for small business, I think would be terribly frustrating for me. Because I already have, in some cases, Congress in some cases, the

administration in virtually every case, the agencies to fight. If I got to fight to get another vote, that is one fight I don't want to have to take.

Mr. MASTROMARCO, let me ask you a question. Let's go to the regional advocates. Okay. Now, your experience, as you watched the agency over the years, is how much of them have a political background as opposed to a small business background?

Mr. MASTROMARCO. Close to 100 percent.

Chairman TALENT. Have a political background. And that is administration after administration.

Mr. MASTROMARCO. Yes. Well, they are just political plumb positions. That is their purpose.

Let me, if I can, extend a little bit of the remarks that Jere made. Sometimes it is not necessarily the positions that the Chief Counsel takes that is as important as those he does not take. It is a question of when he gets involved in issues. On the legislative front, for example, the Congresswoman had mentioned earlier her support for the elimination of death taxes, which amounts to a Federal-leveraged buyout of family businesses. I am not aware that Jere has taken a strong position for repeal on the Hill. It is those types of issues, where they have a decision between getting involved, and not getting involved that is very important. I agree with Jere that, he is, of course, a lovable guy. That is part of the reason why he can be convincing. He also tends to be independent when needed. I don't think "acrimony" is quite the right word. I think "aggressiveness" might be, perhaps, a better word.

Chairman TALENT. You know, Dan, let me end run you for a second. I hear everything that you are saying. But sometimes some of these agencies just go after small business people.

Mr. MASTROMARCO. Absolutely.

Chairman TALENT. What if they went off the environment? Let's say the Sierra Club would be acrimonious, okay. If they went after a lot of these other special interests, they would be acrimonious and I don't blame them. I think for us to institutionalize people, this Committee has tried to do this, we get a little acrimonious when we have to, and the gentlelady maybe a little more than I do sometimes. And, you know, it works. If they know you are willing to do that, it works a little bit. So let's not shy away. I hear what you are saying. There is never an excuse for being uncivil. We have tried always to be civil.

Mr. MASTROMARCO. That is what I was saying. It does work. Aggressiveness worked. It is part of my essential DNA and why we were successful when I was with the Office of Advocacy, we took very aggressive stances on unpopular issues.

Chairman TALENT. Jere, we will let you have a comment to that if you want. But let me ask today something first. Today you mentioned something—well, maybe we can take just to the line item now and see how that works and then do a commission idea later on. Let me tell you why I disagree with that. There is a window to do this sort of thing. When that window closes as a political matter, it—and you are getting a new administration, no matter which party wins, because then it is not a political thing.

I mean, if we establish this commission this year, we have no no idea whether it is going to benefit a Republican or Democratic

president. In other words, if you are a Democrat sitting here, you are thinking, well, if we establish this commission, there will be greater independence, and then from my perspective, saying to the same thing about the Democrats. So once we get a new president, there is no way we are going to get this done, because whoever that administration is going to say I don't want this new commission out there fighting my appointees.

There is a pretty decent chance that I think an outgoing president might sign it. So respond to that, would you?

Mr. MCCracken. You make a good point in terms of the political timing of when you can do this kind of thing. But my deeper concern is we are just now starting this debate. As you know, we got July and a little bit of September and that is it. I would be surprised if we could reach a high degree of consensus between the House and the Senate and getting this whole thing done this year in time. And I would hate to see the Congress miss the opportunity to at least do the improved independence through the appropriations process while waiting for that kind of consensus to develop.

Chairman TALENT. I am just disinclined to have something which continues in name but not in substance, unless you have an extraordinarily strong person as Chief Counsel, in which case you don't need the line item either, do you? All the arguments against the commission, the only grounds that you can do it collegially, and you have a strong-person thing, it is all arguments against the line item. If you got a strong enough person, they will go and fight for fun as Jere has done.

The line item, on the other hand, to the extent that you have a problem getting visibility and the rest, it was, you know, I don't know that it changes anything. And I don't know that I want to be a party to something that, you know, you will go out and brag about what enhances the independence of the Chief Counsel when it really doesn't.

Jere, did you want to respond to what Dan said? You can if you want.

Mr. GLOVER. Just to be factually correct, we have taken a number of positions on estate taxes beginning in 1995 when we supported the estate tax provisions in the Contract with America. We sent letters to the Ways and Means, House Small Business Committee, Senate Small Business Committee. We supported NFIB's proposal in previous years on the estate taxes. We have taken three different positions on estate taxes, always in support of estate tax reform. By and large, we respond when Congress asks us to, and every time that we have been asked on the estate tax, we have been very supportive of reform.

Chairman TALENT. I will recognize the gentlelady and thank her for her patience.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. I think that we might be able to get the Senate to act on this legislation before they act on the reauthorization bill. Mr. Glover, we currently have a process whereby the SBA has procurement goals with other agencies. I am a little concerned that an agency such as the Department of Energy has a small business goal of 5 percent for Fiscal Year 2000, while the U.S. Department of Agriculture has a small business goal of 43 percent. I think the way it is structured with a mid-

level career SBA employee going to these big agencies makes it unclear whether the SBA is dictating the terms to an agency, or whether an agency is dictating the terms to SBA. And more often than not, it appears that the agency is dictating the terms to SBA. It seems to me that if we create an independent Office of Advocacy, many of the tools that you already use to get agencies to comply with SBREFA could be applied to get agencies to comply with Federal small business procurement requirements. Could you please comment on that?

Mr. GLOVER. As most of this committee knows, the procurement battle is one I think I have lost every step of the way from opposing some of the reform legislation that went through, to trying to get originally goals for women and other things through. We won some things, but we have lost a lot more than we have won. The goal process, I only recently fully understood it and how it works, and it is certainly not functioning. Whether it is in the Office of Advocacy or whether it is someplace else in the SBA, it needs to be at a much higher level and needs to have much more senior commitment to it.

These goals should drive significant dollars to small business, and I am surprised that it is being decided as low down as it is. It clearly has to be at a very high level, the Administrator has fought for the top goal, raising it to 23 percent, for example. But when you drop below that, it needs to be raised up to a much, much higher level somewhere, whether it is Advocacy or within the SBA.

Ms. VELÁZQUEZ. Would you feel comfortable with the Office of Advocacy becoming an independent agency office to do the job that SBA is not doing?

Mr. GLOVER. I have always believed that I will do the best I can with whatever task, and whatever resources that are provided to me. If I am tasked to increase government procurement, I will fight for it very hard. When we lost the fight, we created PRO-Net and we had a whole plan to force agencies to use PRO-Net that weren't meeting their goals. There are things that need to be done in the procurement area. But I think that is up to you folks and the administration to decide where it is housed.

Ms. VELÁZQUEZ. Mr. Glover, the SBA has never won a department appeal on contract bundling. Do you think the Independent Office of Advocacy with jurisdiction over this issue will be able to change this?

Mr. GLOVER. I don't know. The laws have changed. Bundling is one of the worst problems that we have seen. We have tried to document it. We know how bad it is. Technically, can we win a fight? I don't know. But there is no question that the hearings that this committee has held, your involvement and your commitment, have been important to raise that issue. It needs to be raised. And it needs to be addressed, whether through litigation or through regulation. It needs to be very clear that what they are doing is not working for small business.

Ms. VELÁZQUEZ. Under the commission concept as proposed, how do you see that impact being the traditional role Advocacy has played in such areas as the White House Conference on Small Business?

Mr. GLOVER. That is an interesting question, because a national commission, the commission is more of an—as I see it structured, is more of an adjudicative adversary regulatory body doing more in that regard than a lot of the other things we can do, such as more long-range research, more long-range working with the groups. I think it could work. I think it could work. I would have to think through it a little bit better.

Ms. VELÁZQUEZ. Mr. Morrison, would you like to comment on that?

Mr. MORRISON. Putting the Advocacy in charge of the White House think it is a little awkward. Obviously, something that is billed as a White House conference is intended to be an Executive branch activity, but I think you could solve it. Certainly, you could just arrange it in the law.

Ms. VELÁZQUEZ. Today—

Mr. MCCracken. Seeing is—the quadrennial conference is—it is not necessarily a White House conference. It strikes me as being entirely appropriate if there is a commission to have them staff it rather than going through this whole process of hiring all these temporary people and letting them all go every few years.

Ms. VELÁZQUEZ. Mr. Mastromarco.

Mr. MASTROMARCO. I think a commission—

Ms. VELÁZQUEZ. I have a question for you. Sorry.

Mr. MASTROMARCO. Thank you.

Ms. VELÁZQUEZ. It is my understanding that you are here to testify on your experiences at Advocacy, correct?

Mr. MASTROMARCO. Yes.

Ms. VELÁZQUEZ. In your current position, do you represent any small business concerns?

Mr. MASTROMARCO. Oh, sure, many.

Ms. VELÁZQUEZ. Can you please list some.

Mr. MASTROMARCO. Our firm has represented a host of small business organizations, for example, I am Executive Director of a group called the Travel Council for Fair Competition which is travel industry group consisting of the United American Motorcoach Association, American Bus Association, American National Park Hospitality Association, National Tour Association, and the list goes on from there. So yes.

Ms. VELÁZQUEZ. During your work at Advocacy, you seem to allude that the Chief Counsel lacked independence. You stated that. Was this lack of independence because of the structure of the Office or because of the stream of acting Chief Counsels?

Mr. MASTROMARCO. Well, I think the first point is that no matter what Chief Counsel is in that position, even if they are an extremely independent person by heart and by nature, we need to create an environment in which they can exercise the independence expected of them. The personalities don't matter all that much. During the Bush administration, they were clearly not independent. No question about it. In fact, the Office was almost run at times by the Director of Congressional Affairs for the agency who knew nothing about small business. But Frank Swain was a very independent Chief Counsel and did a fine job. The moral is: We shouldn't depend strictly on the personality of the occupant, we should create the environment.

Ms. VELÁZQUEZ. That plays an important role?

Mr. MASTROMARCO. Yes.

Ms. VELÁZQUEZ. We have been here listening to Jere Glover's accomplishments, and some of them have been not in—it has been in contradiction with the White House and the administration. And it happened because of the strong personality and independence of Mr. Jere Glover. So that brings a—it plays an important role there having an effective advocate.

Mr. MASTROMARCO. I think that role is served by the Senate. They are to be reminded yearly during the confirmation process that is the type of person they want. But here, what we are talking about, is creating the environment, creating the organic legislation that would ensure that result. That is what I am most concerned about. And also, it is not necessarily the positions as I mentioned that the advocate takes. I mean, in every public position, they have got to disagree, otherwise, it doesn't make that chart over there. But it is also what positions they choose to take versus not choose to take.

And thirdly, it is the issue of what research they fund, whether they fund innocuous academic research in the true sense of the term, or whether they really fund research, for example, that shows how many family firms are destroyed by the death tax or by how the ergonomics rule affects small business, or about the many other issues affecting small business, including fundamental tax reform.

Ms. VELÁZQUEZ. Mr. Morrison, do you think that agencies will view the Office of Advocacy any differently if it were an independent office or a commission?

Mr. MORRISON. Absolutely. I think that is the purpose of the legislation. The relationship does change. And there are advantages and disadvantages. As we have heard here at some great degree today, if the objective is to create this environment that really, from the get-go, communicates strong independence, it will do that, but I think that there is also a loss in terms of an informality in the relationship, which I think will probably disappear.

Ms. VELÁZQUEZ. Mr. Cole, you are here today to testify before the committee based on your expertise as a former Senate staff, correct?

Mr. COLE. And as an attorney representing small business clients in agency rulemakings, yes.

Ms. VELÁZQUEZ. So you represent some small businesses organization. Thank you.

Mr. Cole, the essence of a commission like FCC, SEC or FTC is to administer a very complex set of government regulations. If we were to set up Advocacy as a commission, its role would be very different. How would that fit with the traditional investigatory role that most commissions play?

Mr. COLE. It is a different role. We don't have a perfect model. In some respects, the Office of Advocacy should act like an Inspector General's office. In some respects, it should act like counsel for small businesses in various rulemakings. So I don't think that there is a perfect parallel anywhere in government that we can look to.

The question is, what type of structures could we create that would enhance the effectiveness of the organization. I agree that the real measure is the effectiveness of the office with respect to small business, not some artificial measure of independence. But the roles of agencies like the FCC are not wholly dissimilar. The commission would be doing a more aggressive job of writing regulations on how agencies should comply with the Regulatory Flexibility Act, which is actually a fairly complex process. I would envision that regulatory program to be a series of guidances on how the agencies operate, and that is going to have to be pretty complex. There isn't one easily-written piece of guidance that can apply the Reg Flex act to all agencies.

So actually you are going to have a fairly complex, but differentiated series of guidances for different Federal agencies. And so in that sense, the commission is going to be overseeing a regime of guidance or regulation very similar to, although not on the scale of the FCC but not be that dissimilar from the FEC. I think the parallels to the adjudicative functions of the agencies is one that we can draw on, but we shouldn't make too much of it. The commission does not have to interact with other Federal agencies purely in an adjudicative role. I don't see the informal discussions ending simply because we move to a commission. There is nothing to stop those discussions from continuing. That is going to be up to the people who inhabit the agency.

In my testimony, I focused on getting the right people, and part of that is getting people who will continue the best traditions of the Office of Advocacy. Overall, I see this as adding new tools to the tools available to Jere today.

Ms. VELÁZQUEZ. Mr. Morrison, would you please comment on this.

Mr. MORRISON. Well, in terms of whether the informal relationship would continue, I would hope they would. But I think I would respectfully disagree with Mr. Mastromarco on that. I am not nearly as optimistic, no matter who you put in there, because I think the structure is intended to be essentially adversarial. It is intended to create an essential clash between the commission and other Federal agencies. But he might be right. This is, you know, new ground that we are plowing here. I am not sure, just my take on it would be a little different.

Ms. VELÁZQUEZ. Thank you.

Ms. Kerrigan, the Small Business Survival Committee has consistently been a voice that speaks out against additional Federal spending. So I think your input on how this committee advocates critical funding is important. Could you comment on the cost of the commission, which could be as high as some estimates of \$20 million? Would your members be comfortable in supporting such a price tag for expanding the program?

Ms. KERRIGAN. You are correct. One of the biggest concerns and priorities of the Small Business Survival Committee is to limit both the size and scope of government. And we have been very vocal and aggressive, and what are some of the other words we are using here today, "acrimonious," that is right, relative to those issues. What many of our leaders in our organization are currently grappling with is if you have this money—it is hard for them to believe

that if you are spending this money in Washington, will it go down a black hole or can it be used for something good? On the other hand, there have been many of our leaders who have said we do need this type of structure in Washington, and it will work simply because of the size of the regulatory state. That is why we are looking at doing something like this.

The question in our mind is, and what some of the members are looking at is gee, if we spend money on a commission, is this really going to be a net benefit for small business? Does this mean that if we spend 20 million a year, does that mean 50-, or a 100 billion less in terms of what we have to spend for regulatory costs? And so, you know, you are right. It is a tough thing to address from our perspective because——

Ms. VELÁZQUEZ. What is it that you are telling me? You are not sure if you are going to be——

Ms. KERRIGAN. No, hopefully this is just the beginning of the debate. There are some issues pretty cut and dry for SBSC. We are opposed to the expanse of the size and scope of government. We are against it if it expands government, we are for it if it doesn't. The current environment makes that assessment much different because of the 4,538 new regulations that are in the pipeline. I mean, we do need some type of entity, an independent body that is going to be a watchdog and do all the types of things that the commission intends to do.

So we want to give more feedback to the committee and the Chairman on this, because we do have mixed reviews right now.

Chairman TALENT. I thank the gentlelady. Mr. Bartlett has been very patient. I am pleased to recognize my friend, the gentleman from Maryland.

Mr. BARTLETT. Thank you. Mr. Glover, I really would like to echo the position of the Chairman. I think that the accomplishments of your office have been in spite of the way it is structured, not because of it—I think it is because you are there and we are lucky to have you there, but you won't always be there, so it is very appropriate that we are looking at a way to structure the office so that it will be effective in the future. I would like to see the Office of Advocacy at least as strong as the agencies that you are overseeing, the EPA and OSHA, and hopefully we are going to add IRS to that list.

I would like to see your office so strong that when they were coming out with a rule that you felt was going to hurt small business, that you could say you can't do that because that is going to hurt small business. In fact, you could have a veto. You could stop them. Now all you can do is to hopefully shame them into doing the right thing by pointing out how stupid their new regulations are. That sometimes works and sometimes it doesn't work. Now, if your agency, if your office is to have that kind of power, one could make the argument that you would then, in effect, be writing the regulations, because the regulations that would get through were those that you approved.

So in effect, you would be writing the regulations. That might be seen as giving your Office of Advocacy too much power. I would certainly like to see you have a veto that at least required a review. Now, if we could structure your Office of Advocacy that way, how



would a difference of opinion between you and the IRS be adjudicated? Obviously, we need some regulations, a whole lot less than we are getting, a whole lot less than we have but we may need some. We wouldn't want an obstreperous advocate just stopping all regulations. Can you envision a mechanism whereby this could be adjudicated?

Chairman TALENT. The gentleman, if I could just interrupt the gentleman, has just happened on the perfect, what we have been searching for, "obstreperousness." That's what we want.

Mr. GLOVER. Let me share with you something that has been working recently that I don't think anybody expected. And again, it is the regulatory review process in the White House. We have had a number of panels in which we brought small business people in. They have raised the concerns under the SBREFA law. They have raised concerns, they have raised questions about data and information. We continue that fight on through the regulatory process and go into the Office of Information and Regulatory Affairs at the White House where the person heading that office up happens to be the former general counsel of the Small Business Administration who was involved in regulations. We carry the fight there and we carry the discussions there. Amazingly, we have won a number of regulatory fights with that office and had some regulations that have actually been killed. I can certainly provide some of those examples to you.

Now, that is not the perfect solution because that office is under—if we question Jere's independence, and the Office of Advocacy's independence—that office is directly in the White House, but they are able, in a regulatory situation, to make some changes.

So the process, the mechanism that you have identified, does have some merit. And there are examples of where it has worked quite well. In a more formal—that is an interesting question of where it would be. The Office of OIRA has had a likewise checkered past as to how effective it has been in terms of solving regulatory problems. It doesn't seem to make much difference who the President is. But the process that you are identifying exists now but in an imperfect world. And I think that you raise an interesting question. And I think that some version of what we are doing now with OIRA may strain that process, because it would have to be somebody in the executive branch that would make that review.

Mr. BARTLETT. Would it have to be somebody in the executive branch? It is really affecting not the executive branch, regulations are going to affect the small business community. I think that the adjudication should come, perhaps, from an ad hoc group. If you had that kind of power, you would have to, very seldom, come to the point, you would have to adjudicate, because they would be reasonable in formulating the regulations, because they would know if they weren't reasonable, you were going to shut them down and it would go to adjudication. I think the challenge is to find a mechanism of adjudication that everybody could buy into, a binding-arbitration kind of thing that everybody could buy into. I am not sure what that could be. I can think of several possible mechanisms.

Mr. GLOVER. Obviously, the courts, in having judicial review authority under the Regulatory Flexibility Act, I think some of the suggestions Mr. Morrison made about strengthening that, the ultimate hammer is going into court, is having your reg thrown out. I think that the courts have done some of that. I think that if we use the example of the Environmental Protection Act, which was passed back in the 1970's, the courts threw regulations out for many years that did not comply with environmental impact analysis. You know that long history. Well, that kind of challenge in the courts for small business has been something we have talked about for a long time. We got some of that now with judicial review, but there are a couple, I think, technicalities that Mr. Morrison identified that I think keep us from making it as effective as we would like for it to be.

But ultimately, the threat of going to court, the threat of us filing an amicus brief all are the reason that we are seeing agencies coming to us now early in the process asking for our help, asking how do we avoid this. And quite frankly, in many cases, we are seeing agencies write their regulations just to exempt small business entirely, because they don't want to even touch this whole process. They don't want us involved, they don't want to have to do a reg flex analysis; they would rather exempt all small businesses from it. So it is working, but it could work better.

Mr. BARTLETT. It is working because you are there. Our concern is that we need to set up a mechanism that is going to work with less effective people in the office. If we just took your present office and gave it an independent status and gave you veto authority that would be adjudicated in some appropriate way, would that be more preferable to you than the commission?

Mr. GLOVER. Sure. Sure. That is a lot more power than anything in the commission proposal.

Mr. BARTLETT. This is what I would opt for, is real autonomy with a veto power, and I think very seldom, you would have to use that, because now, all you have got is some charm and haranguing and still you are being very effective. If you could add to that a veto power, just think how conciliatory they would be and how seldom you would have to use that veto power.

Mr. GLOVER. I appreciate those kind comments. I will tell you, most agencies don't find me charming. I will tell you that I know of no agency official that would use that characterization of me, and quite frankly, of any of my office. But we do have some interesting things. I don't want to discount the things that Congress gave us in 1996. Clearer judicial review authority, clear amicus authority, and the panel process, all of these things are really making a dramatic and significant difference.

So when you change the law, when you tune and tweak it, you are getting good results. Those results would happen whether it is Jere Glover as Chief Counsel or anybody else, because the agencies are afraid they are going to lose in court. The panel process we have made that work better than I think the law intended to work, and perhaps we have done some things there, but once having done that, I think it will continue on. And the panel is working better than I think any of us envisioned it ever would.

Mr. BARTLETT. To the rest of the members of the panel, is there some evil thing that would happen if we were to give the Office of Advocacy veto power that could then be adjudicated in some way if they wouldn't reach agreement? Right now it is generally charm and cajoling and threats, you know, from an office that really doesn't have many teeth because of the way we have structured it. What evil thing would happen if Jere had veto power that would then force an adjudication and—

Mr. COLE. Congressman, my fear is that if you propose giving veto power to the Advocate, whether it is Jere's current office or an independent commission, you are not going to get any legislation passed during the very critical window that the Chairman has mentioned.

You asked two questions about providing a firm independent basis for the Office, and the second was about the issue of veto power. I believe that the current statutory authorities for the Office to file amicus briefs, if an agency refuses to go along with the Office of Advocacy, coupled with what is in this draft will provide a firm statutory basis for the independence of the Advocacy function. A third important feature is the ability of the Commission to issue regulations to implement the Regulatory Flexibility Act. Those three pieces will form a very powerful tool for the commission to use.

I really see it more as an amicus brief, the tool as the amicus brief. The courts are going to give much more deference to the views of the commission based on the language in this draft and the fact that the agency, the commission would be issuing guidance, and would be the agency of expertise in implementing the Reg Flex Act. That is tough of a hammer. And I think you could get that through this year. I just fear if you write into legislation that says that we are going to set up an independent commission that can veto any regulation by any agency of the executive, we are going to end up with nothing, and that is the perfect being the enemy of the good.

Mr. BARTLETT. What I am talking about, a veto that just stops the process. What you are saying is that under the current proposal, that the court would be the final arbiter that you could file the brief that then would have to be adjudicated in court, is that what you are saying?

Mr. COLE. Yes. Under the current proposal, the mechanism is filing an amicus brief in litigation that one of us private lawyers brings against an agency for ignoring the Reg Flex Act, in other words, and the court would, under this act, give much more deference to the advice of Advocacy to make that amicus brief a very powerful document. The court would be the final arbiter.

Mr. BARTLETT. But can an action make the point that they have thought about the effect on small business? And they have considered that and they don't consider that effect to be severe enough to limit them in making this rule? As I understand SBREFA, it simply requires them to take a look at how badly they would hurt small business. My understanding is that they could, in effect, kill small business if they have considered the effect on small business. It is okay for them to go ahead and enact the rule.

And Jere is shaking his head yes that that is true. What we need is an advocate with more teeth than that. Maybe we can't get it through, but goodness knows we need to try. And you know, we need to try to do the right thing. Here we have agencies out there who have been harassing small businesses almost to the point of extinction, and we certainly ought to have somebody there who is their advocate with at least enough authority to bring this to some adjudication.

Mr. COLE. What you are really asking for is a slight change in the Regulatory Flexibility Act. Right now it says the agency, as you correctly pointed out, has to consider the impacts of the regulation on small business. It also has to consider various options to change that. What you could do is amend the Reg Flex Act to say that the agency must come up with an approach that achieves its regulatory ends with the least impact on small business possible. So you could strengthen the Reg Flex Act to add a substantive dimension that is currently lacking. However, the issue of what requirements an agency must comply with under the Reg Flex Act is, I think, separate from the strengthening the Office of Advocacy to be independent and to advocate its views as obstreperously as it wishes to in every single agency rulemaking.

Mr. BARTLETT. Thank you, Mr. Chairman. I think that before we come up with final legislation, that we need to explore various options for not only making the Office of Advocacy independent, but giving it the kind of teeth it needs to do its job. Right now, the pendulum has almost got through the side of the clock on the other side. We need to bring it back somewhere near the center. What I am proposing would hopefully do that. Thank you very much.

Chairman TALENT. I thank the gentleman for his questions. I am pleased now to recognize the gentleman from Illinois, Mr. Manzullo.

Mr. MANZULLO. Thank you, Mr. Chairman. One of the bright lights of this very complicated area of unreturned phone calls, incompetent administrators, and rules and regulations that are hard to understand, is the Office of Advocacy. I can cite, I don't know how many instances where, because Jere was the head of the office, we were able to help small business. Let me give an example. We have a hospital called Dixon KSB Hospital just outside our district, but serves a lot of my constituents. They are one of eight hospitals nationwide that were subjected to some very unusual rules. I asked Jere to come into the office and meet with our constituents, and this was one of those problems that could have cost the hospital attorneys fees that it could not have afforded.

I think even before my constituents got back to Illinois, Jere had cut through the web and was able to get immediate relief to the hospital. What impressed me about this office is I think that the Office of Advocacy of the Small Business Administration should be very close to the heart of the Small Business Administration and to the Small Business Committee. If it is autonomous and independent of these two bodies then it might not be close to small business. We serve on this committee, not because it is glamorous and we have very little jurisdiction, but because we have a heart for the small businesses throughout the Nation that are being essentially hammered by the Federal Government.

And the relationship that I have enjoyed with Jere all these years is the fact that he is tucked into the Small Business Administration. Quite frankly, I don't see how that has ever hindered the zeal, with which he represents small businesses.

It is interesting that more times than not, he has gone up against the very president who appointed him. Now, I think that is good because of whether it is ergonomics, whether it is EPA, whether it is HCFA. HCFA is the worst Federal organization and is not subject to any judicial review. They have an inordinate number of incompetent people running the organizations, and they have books of regulations that no one understands. You will note however, that Office of Advocacy has been in there.

I have a couple of suggestions. I would suggest that the Office of Advocacy be beefed up to allow that office to bring a class action in court representing businesses obviously impacted by legislation or proposed regulation without having to certify as a class. That is pretty simple. To be able to go in there and to fight a rule, some of the most stupid rules that we have seen. My brother owns a small family restaurant. And some guy came along and said where is your sign? This is 13 tables in this restaurant! The bar holds 10 people. My dad and brother built the bar themselves because they couldn't afford \$10,000 to build it. And this guy just started screaming at my brother on a Friday night when the restaurant was full of people coming down for fish. And my brother turned to him and said who in the hell are you? And he said, well, I am such and such, a Federal inspector, you don't have a sign over the bar there warning pregnant women about the dangers of alcohol, and I am going to write you up.

My brother, who has been known to have my temper, could have picked him up and thrown him out, but the man was probably protected in the same manner as a Federal chicken inspector under the Crime Act of 1993. If you lay your hand on a Federal employee, you are going to be subject to a felony. And fortunately, he just let this guy rant and rave and finally left. The guy didn't even order a fish dinner. I guess what I would like to see here is to give more powers to the office of Advocacy to act at the suggestion of people within the SBA and the Small Business Committee. I would like to see the members of the Small Business Committee continue to be able to sit down with the Office of Advocacy and say there is a real problem there. And these small businesses that are affected need somebody to actually lead the charge in court to be able to go into court, because they are getting killed and they can't afford to hire an attorney.

But I do have a couple of questions here. I don't like the word "commission" because with all deference to the Chairman who drew it up, "commission" to me means that there is nobody in charge. And to have three commissioners means that at any given time, one is on the golf course, one is out to lunch, and the other one is in Europe with nobody responsible. That has been my experience with these commissions.

I'd rather have somebody who is in charge and truly accountable. We have been blessed with a Chief Counsel who answers phone calls, who shows up at the office immediately if there is a problem, who is there acting in a very appropriate manner. But Jere, would

you suggest what legislative changes are still needed in the proposal to ensure that if the commission is set up, that it would not become too bureaucratic and slow in responding to regulatory proposals?

Mr. GLOVER. One of the problems with commissions, and you have hit that point, it is one that gives me a great deal of concern. Since most of the times I have been asked to testify or asked to submit a position to Congress, than has been very quick turnaround, a day or two. Collegial bodies tend to not agree very often and once being appointed and sworn in, they begin to have their own ideas and viewpoints.

The first thing they want is staff. They want to have their own special assistants who can tell them what the issues are. There is a real concern on how quickly you can make decisions, and most of the decisions affecting small business come to us either from the agencies or from the Congress very, very late in the process. We have to act very quickly.

So have you to find a way to make sure those commissioners don't hold things up. I think that you are going to have problems with bipartisan commissions, one person feeling they have to write a dissenting opinion on everything that happens. I think that there are some ideas and suggestions that I think are very useful for the Office of Advocacy. There are a number of changes that are proposed in there that under the current structure, would make it a lot better for the Office of Advocacy.

The one problem that I hear very clearly from everybody and which we had discussions with the Senate on is how do you deal with the fact when there are vacancies—when there is no Chief Counsel. One of the early Senate versions basically made the Chief Counsel serve like a judge until removed. I raised some concerns because I think you could get a bad Chief Counsel and you could be stuck with that person and never get them out. They tried a variety of different things and came up with one provision that requires notice before removal, to Congress to give the Office some more permanency.

Other discussions are a fixed term, or even serve until replaced. There are a lot of things you can do to overcome the questions of what do you do when there is no Chief Counsel. The confirmation process is important. But I think that a collegial body, if we look at the history, Congress finally shut down a bunch of those collegial bodies that had been around for a long time. They tend to get bureaucratic, they tend to slow down, they tend to deliberate things. And I don't know how you change that—I believe I run my office very entrepreneurial. I make decisions, the decision tree is very quick. I don't know how you do that in a commission.

Mr. MANZULLO. Do you have 43 people on the staff?

Mr. GLOVER. 47.

Mr. MANZULLO. 47 people. What is different about your office is the quick turnaround in and the willingness to get involved in so many different issues. And I have to scratch my head and say you know, he really works for the Federal Government. And he is a friend of small business and he is in this position. So Mr. Chairman, I would be willing to work with Mr. Glover and whoever it is to beef up the powers of this office to clarify it. The thought of

creating an independent commission, I am not sure about that. It is something that certainly we want to think about. But Mr. Chairman, if the advocate was independent, would he really be answerable to the Small Business Committee or the Small Business Administration? What if he would just be a bureaucrat that doesn't like small business and gets appointed and there is no oversight. What would you do in a case like that?

Chairman TALENT. I don't think our relationship would be affected any more than, for example Commerce exercises oversight over a number of independent agencies, because they still have to get their budget from them. I think that would remain virtually the same. In fact, if anything, it would probably be a little bit closer because they probably feel a greater dependence on the Congress relative to the—in other words, as the dependence on the executive branch lessened, the preponderance of control Congress exercised would probably loom larger. That is just my sense of it. I don't think that is a problem. I respect the concern about the commission being able to move quickly. I think maybe we can address that by doing something with the powers the Chairman would have to act unilaterally, for example, if the others were not available.

Mr. MANZULLO. The reason that I ask this question is that his office moves so quickly now. They do things the other Federal agencies don't do such as returning phone calls. You have had the same problem I have had with it in the Federal Government. But his organization is always there on the cutting edge and willing to take up a cause and do whatever is necessary.

Chairman TALENT. I should pause to see what my counsel here can finish his suggestion which he is writing on there. See what it says here. No, I think Jere is pretty independent. I am not going to say that. Often I just subside and play Charlie McCarthy to their Edgar Bergen, but sometimes the puppet comes to life here anyway.

Thank you guys, anyway. I will just say what has always struck me about this debate, we always emphasize the importance of independence for the Chief Counsel. That is the reason we have the amicus power. That is the reason we have the review powers. That is the reason we have the special hiring. That is the reason we are proposing a special line item. Then when somebody talks about making them truly independent, then somebody comes up with all the problems with it.

I just think we ought to consider, I have been terribly impressed over the last 4 years by the fact that when we get away from short-term issues, there is this really strong consensus on this committee, and I would say in the Congress as well, that what is good for small business people is good for the country. And if we could institutionalize—the extent we can institutionalize that in the government, I think we are reflecting a tremendous consensus in the Congress, which is why this idea is attractive to me. Albeit, I understand the problems.

I think it would probably decrease some of the flexibility or informality. Query whether that would be replaced by the fact that whether they liked it or not, they would want that commission on their side. I think I probably couldn't move as quickly. On the other hand, what is it that the Chief Counsel does that requires typically

like a 24-hour turnaround? The decision to file an amicus brief, you normally have a couple weeks to make that decision. Same thing about, you know, opposing or comments against; usually you have a window period.

So if you had a strong chairman, I wouldn't anticipate that would be a big problem. But I am happy to work with you on ways to try and deal with that. I am not positive that we should move forward with this. But I will tell you from my part in conceding all the points in opposition to it, this hearing has pushed me in the direction of continuing to push this. And I do think if we don't do this this year, it isn't going to happen. Because next year, whoever is sitting here and whoever is President, you are going to have one party, all of a sudden deciding that it doesn't like this idea. And that is going to be the party that miraculously is the party of the President. Because whoever is President isn't going to like this. And if I have the President's counsel, I would tell him to come up with all kinds of ways against it. So I think it is this year or not for at least four more years.

Mr. MANZULLO. I did have one question. I think I will ask it both to Mr. Glover and to the Chairman. Is it possible that this legislation could contain everything it has—I am talking about the enhanced powers—but not create an independent commission? In other words, that the emphasis would be based upon the enhanced powers but leaving the structure the way it is?

Chairman TALENT. Sure. We can adopt measures short of that. We could go with the Senate's view. It is going to be a question of what the Committee wants to do and whether we can come up with an agreement. The gentlelady and I have been talking about it. I am happy to work with you. There are halfway measures that we could do. I would like to urge everybody who cares about small business, I think, that is, everybody in this room, to think for a second what it would be like if we had faith that year after year, there was a commission that, yes, it began to adopt its own inertia, its own momentum, so no matter what issue it was and what administration was in control, there would be a baseline there, somebody in there representing small business. And I think that is what we were aiming at with the Chief Counsel. So why don't we just do it?

Mr. MANZULLO. The problem that I have——

Chairman TALENT. Then Jere, no matter who gets elected, I will recommend you for chairman. How is that?

Mr. MANZULLO. The difference between——

Chairman TALENT. If it is the Vice President, you won't need my recommendation, and it will probably be the kiss of death. If it is Governor Bush, we will see.

Mr. MANZULLO. But the difference between the Office of Advocacy and any other organization or commission or agency that you work with is he serves a unique function of being a highly skilled articulate attorney who can cut his way through the administrative nightmare that stymies each of us as Members of Congress. I don't know how many times I have called him, he serves in the role as a personal counselor to——



Chairman TALENT. Well, if the gentleman will yield a second. As long as we are talking about anecdotal things, I have said many times how much I respect—

Mr. MANZULLO. But that would be stopped if you had a commission, if they had to agree on whether or not they get involved in something.

Chairman TALENT. Let's just remember the opposite side of this. I have not called witnesses and tried to embarrass them. But if the gentleman will talk with people, I am sure you have someone who has been around this process for awhile, there have also been instances where Chief Counsels have been directed to hire people, for example, as regional advocates because of their personal connections with administrators. I mean, there is a whole lot of evidence in the record and not exclusively, or mostly I will say with this administration, which has been better at these things, I think, indicating that that independence is not there.

And I think that would not happen with the commission, because you have people who have statutory independence and would take it seriously. I am not arguing that there aren't things on the other side. I will let the gentleman have the last word. If we mark this bill up, we can have the debate then. But let's not forget the facts that the existing structure at the end of the day allows a compromise of independence that the commission structure would not, whether that is enough to outweigh other things I think is the issue.

Mr. MANZULLO. But this bill eliminates these regional advocates.

Chairman TALENT. I think that is one of the major strengths of it. If we went through the background of the regional advocates over administration after administration, we would find that they are one of the biggest abusers of this process right now. And that is 10 more positions I could give you right now for Jere, for research, or whatever. It is a good way to fund the bill too, Karen, would be to eliminate those positions.

Maybe that would be appealing to your members. I thank the gentleman for his interest and advocacy.

Gentlelady, have you any further questions?

Ms. VELÁZQUEZ. Last week the committee held a hearing, Mr. Glover, on the Ombudsman 2000 report, and the U.S. Chamber of Commerce made a recommendation about combining the Office of the Ombudsman with the Advocacy. What are your views on that?

Mr. GLOVER. I think that is a decision for the Congress to make. I think that there was some discussion about where it should be when it was originally passed. And I think that there are some economies of scale and efficiencies. We have certainly been working more closely with the new ombudsman than we have in the past. We are facilitating some areas of cooperation. Again, we will deal with—we will work with whatever task and whatever resources we are provided.

Ms. VELÁZQUEZ. Thank you.

Chairman TALENT. Thank the witnesses for their patience. We will adjourn the hearing. Thank you, Jere.

[Whereupon, at 12:35 p.m., the subcommittee was adjourned.]

JAMES M. TALENT, MISSOURI  
CHAIRMAN

NYDIA M. VELÁZQUEZ, New York

**Congress of the United States**  
**House of Representatives**  
100th Congress  
**Committee on Small Business**  
2301 Rayburn House Office Building  
Washington, DC 20515-0515

STATEMENT  
OF  
JIM TALENT  
CHAIRMAN  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON SMALL BUSINESS  
WASHINGTON, DC  
JUNE 21, 2000

Our hearing today focuses on an agency of extreme importance to small business but remains one of the least known agencies in the federal firmament – the Office of the Chief Counsel for Advocacy. I have called today's hearing to review the current situation at the Office of Advocacy, whether its efforts at independent advocacy are hampered by its relationship in both the Small Business Administration and the Executive Branch, and what changes should be made to strengthen the Office of Advocacy's primary role as a non-partisan independent voice protecting small business from the regulatory excesses of a federal bureaucracy.

In 1976, Congress established the Chief Counsel for Advocacy within the United States Small Business Administration. The initial primary purpose of the Chief Counsel was to complete a study on small business and its impact on the American economy. Subsequent to the completion of that study, the primary mission of the Office was to represent the views and interests of small businesses before other federal agencies whose policies affect small business. In 1980, the duties of the Chief Counsel were broadened

considerably when it was assigned the task of monitoring agency compliance with the Regulatory Flexibility Act – the statute requiring federal agencies to consider the impact of proposed and final regulations on small businesses and other small entities.

Nothing in the Act creating the Chief Counsel spelled out that the Chief Counsel was to be independent of the President. Nevertheless, the authority to issue reports to Congress without submitting them for clearance by the Office of Management and Budget and the ability of the Chief Counsel to file briefs in federal court opposing the views of the Executive Branch led many in the small business community to conclude that the Chief Counsel should be an independent voice for small business in the Executive Branch.

Yet, the independence of the Office of Advocacy hangs by slender thread. In past years, the Office of Advocacy has seen Administrators use special hiring authority granted to the Chief Counsel in the statute creating the Office to impose the Administrator's personnel decisions on the Chief Counsel. In other instances, the authority and ability of the Chief Counsel to file amicus briefs on cases of extreme importance to small businesses has been called into question by various parts of the Justice Department. Today, the Office of Advocacy operates under the tension of a statute that authorizes the Chief Counsel to file amicus briefs, the Regulatory Flexibility Act, and an Executive Order mandating that all disputes among executive branch agencies be resolved through mediation by the Department of Justice.

In this hearing, I am interested in examining various mechanisms for enhancing the independent voice of small business within the government. This is a nonpartisan issue since the regulatory problems facing small business do not respect political party

lines. Any enhancement to the Office of Advocacy must start from the proposition that it must be able to do what is best for small business.

Our colleagues in the Senate believe that one solution is to provide the Chief Counsel with a separate line item in the budget – a line item that currently does not exist – forcing the Chief Counsel to negotiate with the Administrator for resources. The Chief Counsel’s role in the government is unique and the Chief Counsel should not have to rely on the goodwill of the Administrator to obtain needed resources. Clearly, this idea has some merit and I hope to explore it in further detail today.

However, I am not convinced that the approach adopted in the Senate provides the Office of Advocacy with necessary independence required to reach optimal effectiveness as the voice of small business. A separate line item on the budget does not eliminate what I perceive to be the primary problem with the enhancing the role of the Advocacy Office. It still would remain in the Executive Branch and it does not take a genius to understand that when a movable object – the Chief Counsel – meets an irresistible force – the President – the movable object moves.

In my view, the best solution is to remove the Office of Advocacy from the auspices of the Executive Branch but not establish it as an arm of Congress either. There is another alternative: the establishment of an independent collegial body like the Board of Governors of the Federal Reserve or the Securities and Exchange Commission. These government agencies are not subject to the regulatory authority of the Executive Branch. For example, Executive Order 12,866, which specifies the regulatory oversight authority of the Office of Information and Regulatory Affairs, exempts these independent collegial bodies from the strictures of the provisions. Similarly, the Paperwork Reduction Act

recognizes their special place in the bureaucracy by allowing them to override the Office of Management and Budget disapproval of a recordkeeping or reporting requirement. No Executive Branch agency, such as EPA or the SBA, has that power. Finally, the commissioners of these agencies, although appointed by the President and confirmed by the Senate, do not serve at the pleasure of the President.

And that is the greatest strength of establishing an independent commission of advocacy. It would make its own personnel and budgetary decisions. Most importantly, it would make its own policy decisions based on what is best for small business without regard to the opinions of the Executive Branch. Hints of partisanship in personnel policies or political decisions would evaporate.

Today we have a panel of witnesses all of whom are intimately involved with small business issues and the functioning of the Office of Advocacy. I expect that they will have diverse views on mechanisms to improve the functioning of the Office of Advocacy, enhance its capabilities as the final bulwark in the federal government against a regulatory bureaucracy run amok, and provide for a truly independent Office of Advocacy.

I will now recognize the Ranking Member, the distinguished Gentlelady from New York, for her opening statement.



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

Testimony of

**Jere W. Glover**  
**Chief Counsel for Advocacy**  
**U. S. Small Business Administration**

Before the

**Small Business Committee**  
**U. S. House of Representatives**

June 21, 2000

**67-488     41**

Mr. Chairman, Members of the Committee, my name is Jere W. Glover. I am Chief Counsel for Advocacy at the U. S. Small Business Administration. I was appointed by President Clinton and confirmed by the U. S. Senate in May 1994. I am pleased to have the opportunity to appear before this Committee – the first time in two years - to discuss the Office of Advocacy and to lay before you facts about the policy successes of the Office during the six-year period since my confirmation. These successes were made possible in part by actions of the Congress: first, when it established the Office in 1976 as an independent voice for small business, with authority to appear as *amicus curiae*, and second, when it enacted the Regulatory Flexibility Act of 1980 (RFA), later amending it with provisions in the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. Two of the SBREFA amendments are worth highlighting: one re-affirmed the Chief Counsel's right to appear as *amicus curiae* in appeals from agency final actions, expanding the subject matter that the *amicus* could address, and another conferred jurisdiction on the courts to review agency compliance with the RFA.

Before proceeding, it is important to note that my comments reflect my own views as Chief Counsel for Advocacy and do not necessarily reflect the views of the Administration. In the context of this hearing on the independence of the Office of Advocacy, this disclaimer takes on a special significance directly relevant to the issue before us, namely the independence of the Office. Since I assumed the role of Chief Counsel, Advocacy has testified before Congress at least 40 times, and submitted testimony for the record on numerous other occasions. My testimony was never submitted for clearance by any office in the Administration. On 25 occasions I took positions that were not consonant with Administration positions (see attached list). This

is some evidence not only of my commitment to small business but of the independence of the Office. Independence is a prerogative I have jealously guarded within this Office and is also one that has been honored both by the Congress and the Administration.

**Independence – How to Measure It.**

Since assuming office, I have had one objective – to be an independent spokesman for small business before regulatory agencies, before Congress and within the Administration. One example: very early in my tenure as Chief Counsel I openly advocated that the Administration and the Congress establish a procurement goal of 5 percent for women-owned businesses. The Administration eventually adopted this recommendation. Congress also supported it and it has become a vital part of SBA's procurement goal-setting process for agencies.

Significantly, Advocacy has always interpreted its mission broadly. It has filed comments with the Federal Trade Commission on mergers – one affecting small cable companies and another affecting small oil refiners. We also raised small business concerns with the U. S. Postal Service regarding its rule on Commercial Mail Receiving Agencies. These actions, we believe, are consistent with the mission given to the Office by Congress – that of being an independent voice for small business on all policy issues.

To be an effective voice for small business I have always viewed my role as striving for consensus at both ends of Pennsylvania Avenue. As Committee Members well understand, consensus is not always easily achieved. It can take years, particularly on contentious issues. Witness the time it took to garner support within Congress and the Administration on an amendment that allows the courts to review compliance with the



RFA. The issue was first raised during the debates in 1980 over the adoption of the RFA. The issue surfaced again at the 1986 White House Conference on Small Business (WHCSB) convened under the Reagan Administration, and again at the 1995 WHCSB under the Clinton Administration. Judicial review, an issue consistently supported by the Office of Advocacy to the best of my knowledge, became part of the RFA in 1996 – four Administrations, nine Congresses, and 16 years after the issue first surfaced.

The key to building consensus is never to view any position taken by the Congress or the Administration or a regulatory agency as cast in stone. The challenge is always to find new arguments and new data in support of reforms and initiatives that help small business. The process is a continuum. At any given moment, you may find the Chief Counsel in disagreement with the Administration and other times in disagreement with Congress, and sometimes with both, for example, on patent and bankruptcy reform. The role of the Chief Counsel is to persist in addressing issues and to bring new data and arguments to the table for consideration by decision makers. Sometimes I have prevailed; sometimes I have not. But I never was pressured, nor did I ever abandon the Chief Counsel's independence to pursue small business issues, even those on which the Office did not prevail at a particular point in time.

Thus the question: how is independence measured? Is independence measured by how often the Chief Counsel disagrees *publicly* with the Administration? Is independence measured by how often the Chief Counsel disagrees with legislative proposals? See again the attached list of those instances in which I have disagreed publicly with the Administration. But it is important to add that public disagreements should not be the norm. Why? Because it serves the interest of small business for the

Chief Counsel to be perceived by the Administration, by regulatory agencies and by the Congress as an *ally* arguing for sound public policy --- not as an *adversary*. Being an ally keeps access to policy councils open to the Chief Counsel. *Access* to early deliberations is crucial if administrative initiatives are to be tailored to the concerns of small business. Early consultation affords the opportunity to alter proposals, reduces the overall cost of the regulatory process by anticipating and addressing potential objections, and minimizes the cost of the total process up to and including enforcement.

I should further add that anytime the Chief Counsel has to disagree publicly with the Administration (or the Congress), the disagreement must lack acrimony to ensure that the doors remain open to future policy deliberations, often on the same issue. Members of Congress are experts at couching disagreements in diplomatic terms when to do so helps position the debate to garner support at a later date. It is no different for the Chief Counsel working within the Administration or with the Congress.

Finally, while public disagreement with the Administration (or with Congress) may be *some* visible evidence of independence, it is *not the total measure* of the Chief Counsel's independence. Other activities should also be part of that measure, to wit, those occasions when the Chief Counsel has successfully persuaded the Administration to initiate a policy change or to alter a policy it is considering in order to accommodate the interests of small business. To illustrate this point further, it is appropriate to consider the impact on public policy of the White House Conferences on Small Business, where small business people debated an array of topics on which they wanted reform.

**1995 White House Conference on Small Business**

While I attended the 1980 and the 1986 White House Conferences on Small Business (WHCSB), my involvement with the 1995 WHCSB was as Chief Counsel. The 1,800 small business delegates from the 50 States and U. S. territories adopted 60 recommendations for consideration by both the Congress and the Administration. The Office of Advocacy immediately took steps to implement those recommendations. To do otherwise would have been an abdication of the Chief Counsel's responsibility to represent small business. Some recommendations would require congressional action and others could be implemented administratively. We set up a structure through which we maintained contact with State and Issue Chairs elected by the delegates to pursue implementation. We held two conferences during which implementation of the recommendations was discussed. We also organized interagency meetings at the White House to discuss administrative measures that should be taken in response to the recommendations. We constructed a directory of delegates by issue and by state for use by the Congress in identifying potential witnesses for legislative hearings. Progress reports were submitted to the Congress, and the President actively sought information during Cabinet meetings on the progress being made by agencies to act on the recommendations.

The record of actions is unprecedented. To date, the number of 1995 Conference recommendations that have resulted in administrative and legislative policy changes exceeds that from any previous conference. Action, in whole or in part, has been taken on nearly every issue recommendation, resulting in significant progress for the small business community.

Through the Conference agenda, Congress and the Administration have found common ground on the nation's small business priorities. Congress passed, and President Clinton signed the following legislation in response to the recommendations:

**1999**

- SBIC Technical Corrections Act
- Small Business Year 2000 Readiness Act

**1998**

- Internal Revenue Service Restructuring and Reform Act
- Department of Defense Reform Act
- Omnibus Budget Reconciliation Act
- Paperwork Reduction Act Amendments

**1997**

- Balanced Budget Act
- Taxpayer Relief Act

**1996**

- Small Business Regulatory Enforcement Fairness Act
- Small Business Job Protection Act
- Health Insurance Portability and Accountability Act
- Economic Growth and Regulatory Paperwork Reduction Act
- Telecommunications Act
- Federal Acquisition Reform Act
- National Securities Markets Improvement Act
- Small Business Programs Improvement Act

**1995**

- Small Business Lending Enhancement Act

Administratively, the number one priority, clarification of the independent contractor definition for tax purposes, was addressed by the Internal Revenue Service. Working with delegates, the IRS published an agents' field manual that fully explained the agency's policies. Additionally, in the area of pension reform, several administrative changes have led to increased opportunities for small business participation in retirement options (see the following pension discussion).

**Other Significant Small Business Initiatives Instituted by the Office of Advocacy**

The statute that created the Office of Advocacy (15 U.S.C. sec. 634a *et seq.*) details the responsibilities of the Office, which include, among others: examination of the role of small business in the economy; measurement of the direct costs and other effects of regulation; assessment of the impact of the tax structure on small business; study of the ability of the financial markets to meet small business credit needs, including the credit and equity needs of minorities; development of recommendations for creating an environment in which small business can compete effectively, etc. This is an extremely broad mandate and we have worked to ensure that our research addresses emerging public policy issues that fall within this broad mandate. For example, each year we have published a report ranking all U.S. banks on their lending to small business.

There is one research effort that is worth special mention. Advocacy's research demonstrated that access to equity capital – not merely credit – was becoming a barrier to the growth of small business. The need for equity capital was not being met by the existing venture capital market, which our research documented was investing its resources in much larger investments than small businesses needed. Aggravating the shortfall was the fact that the market for investments between \$250,000 and \$3 million is disorganized, inefficient and costly to both small firms and “angel” investors. The market needed corrective action. The Office of Advocacy devised an Internet-based system, *ACE-Net*, through which small firms could list their equity needs, and accredited investors, using a secured password, could access the system to identify firms with which to negotiate an investment agreement off line. The Securities and Exchange Commission (SEC) issued a “no action” letter for the new Internet-based service, and 42 states have

adopted an “accredited investor” exemption, several of which are specific to *ACE-Net*. The SEC recently issued guidance to the effect that for-profit companies using the Internet to list public offerings need to be broker-dealers and comply with all SEC regulations, leaving the field to *ACE-Net* as a unique service that complies with both Federal and State securities laws. Negotiations are now under way to privatize *ACE-Net*. When this is accomplished, there will have been created a new *national* market, facilitated by the Internet with the blessings of Federal and State regulators, that accredited investors can use to find investment opportunities. This will help close the equity chasm that now exists for small business.

The Internet design for *ACE-Net* suggested to us yet another application that could help small businesses find procurement opportunities. This evolved into a program called *PRO-Net* through which small businesses can register their companies, describe their products and services, update their company information at will, and use the service to find procurement opportunities. But the real value of the system is ease of access and reliance on the data by contracting officers to find small businesses with which to explore procurement possibilities. This service is a major step toward eliminating contracting officers’ claims that they cannot find small businesses to bid on their requisitions.

These are but two examples of how the Office of Advocacy has both identified and addressed market imperfections that are erecting barriers to the growth and development of small business – initiatives that grew out of the very broad mission given to the Office of Advocacy by the Congress.

#### **Small Business Involvement in the Work of Advocacy**

The small business public policy issues confronting the Office of Advocacy are as diverse as the industries in which small businesses are engaged, and several would not make headlines news in the business sections of our daily newspapers, despite their importance to a particular industry or industries. To stay in touch with changing needs and impacts, and to ensure small business participation in policy deliberations of public officials, Advocacy has done the following:

- Held ad hoc industry roundtables frequently with small business representatives to discuss:

- court decisions on RFA and pending RFA litigation
- procurement
- environment
- workplace safety
- fishery and other resource regulations (mining, etc.)
- telecommunications
- taxes
- pensions and related issues
- transportation
- technology

Government officials, including congressional staff, also attend. The Administrator of OSHA attended one of our roundtables at which the ergonomics rule was discussed. These are important forums where small business owners can meet policy-makers face-to-face and engage in two-way communications.

- Held regular meetings with leaders of national small business organizations to ensure we remain in touch with the issues of concern to their members.

Direct benefits for small business have resulted. Here is but one example involving the IRS and Treasury. Advocacy has organized dozens of meetings, roundtables and work sessions with IRS and other Treasury officials for small business owners and trade associations. These sessions led to agreements on a simplified defined-

benefit plan, safe harbors for small business 401K participation, simplified forms to reduce paperwork burden, and flexibility in participation declarations. We will continue to bring small business people together with IRS and Treasury officials to discuss continuing concerns on taxes and pensions and we are pleased with the IRS's and Treasury's receptivity to having such meetings.

As for other interactions with small businesses, attached are letters that describe the working relationship Advocacy has maintained with small businesses and their representatives on specific issues.

Beyond our interaction with small firms, the Office of Advocacy has also reached out to academic and government researchers to engage them in dialogues on small business public policy issues. We held a conference on Industrial Organization Economics examining both the legal and economic trends in this field of research to see what new research was emerging and how court decisions were influencing industrial organization trends. We also sponsored two conferences addressing the impact of bank mergers. The most recent, completed just last week and attended by more than 100 people, produced a wealth of information on what is happening in the banking industry—for example, how small banks are emerging to fill the credit needs of small business, how credit scoring is affecting the market, and how call report and Community Reinvestment Act data can be used to shed light on the credit marketplace. Chairman Leach and Ranking Member LaFalce both addressed the conferees.

Finally, the Office of Advocacy has held three conferences to showcase state and local initiatives that help small business. Discussions on such initiatives help state and local officials institute similar and even improved services for small business. A



publication – *Models of Excellence* – emerged from these conferences for use by Governors interested in small business initiatives.

Each of these endeavors is premised on a basic economic principle, namely, information rationalizes markets. Markets are imperfect where information is lacking; public policy decisions are also imperfect when they are based on imperfect information. Thus, one of Advocacy's missions is to ensure a place at the table for small business.

#### **Regulatory Achievements – Impact of SBREFA**

The foregoing provides a backdrop for Advocacy's important regulatory work. Advocacy reviews and critiques the regulatory proposals of approximately 20 Executive Branch and independent agencies. The Small Business Regulatory Enforcement Fairness Act, which requires that EPA and OSHA convene Small Business Advocacy Review panels, also mandates that the Chief Counsel be a member of the panel. This change has altered the way these two agencies approach the regulatory process. I have witnessed this change firsthand, having participated in 20 EPA panels and 3 OSHA panels. The work of the panels is labor-intensive, consuming on average over 500 professional hours for Advocacy alone. This average understates the amount of time spent on the OSHA ergonomics rule, especially when one considers the number of meetings Advocacy staff addressed to explain and discuss the rule with small business people. But the effort has been worthwhile, since the panels generated significant savings for small business.

And the impact of SBREFA goes well beyond these two agencies.

When SBREFA was first enacted, the Office of Advocacy provided briefings to approximately 200 small business trade association representatives and more than 500

Federal officials. We participated in several meetings convened by the Office of Information and Regulatory Affairs (OIRA) for high-ranking agency officials specifically to discuss the SBREFA amendments, how the amendments would affect their regulatory process, what the law required regarding small business impact analyses and that compliance with the RFA would now be subject to judicial review in any regulatory appeals.

Since then, it is becoming increasingly clear that the SBREFA amendments are changing the culture of regulatory agencies. We documented this trend in last year's report to Congress on agency compliance with the RFA and again in this year's report. That is not to say that all agencies are complying with the RFA 100 percent of the time. That certainly is not the case and we so reported. But there is renewed interest, as reflected in agency concerns about complying with the RFA. We have received a growing number of requests for Advocacy involvement in regulatory deliberations *prior to* publication of regulations for public comment. And it is also evident from Advocacy's increased involvement with OIRA's review of final rules, pursuant to its authority under EO 12866 and the Paperwork Reduction Act. We believe this change in agency focus is a direct result of the SBREFA amendment, which empowers the courts to review agency compliance with the RFA.

It is also a result of the close working relationship SBREFA has in effect established between Advocacy and OIRA in the Small Business Advocacy Review panels, which OSHA and EPA must convene when these agencies anticipate that a rule will have a significant impact on a substantial number of small entities.

Finally, Advocacy's first filing of an *amicus curiae* brief, did not go unnoticed. We prevailed on the issues raised in the brief, and the challenged rule was remanded to the agency.

While we have filed only one *amicus curiae* brief, we have nevertheless relied on that authority to resolve several regulatory disputes with agencies. One of the Committee's Counsels has firsthand knowledge of this, since he played a major role in a dispute with the Federal Communications Commission when he was on the staff of the Office of Advocacy. Just four months after I assumed office in 1994, two years before the adoption of SBREFA, we filed a notice to appear as *amicus curiae* in an appeal from an FCC rule. Our notice of intent to file triggered several calls from the Commission and the Department of Justice on the issues that concerned us. With only four hours remaining to file the brief, an agreement was reached and a commitment received from the Commission to revise the rule along the lines we recommended. The details do not matter – but the process does. This was informal behind-the-scenes negotiation with a regulatory agency on behalf of small business -- concrete evidence that the *threat* of filing an *amicus curiae* brief can be as important as the *actual* filing. We have found this to be the case in other regulatory disputes that were resolved without Advocacy having to file a brief. By the way, I have with me today a copy of the brief that was never filed.

### **Impact Measurements**

The changes agencies have made to regulatory proposals are further evidence of the cultural change that we believe is occurring. We measure impact not by how many rules we review or how many rules we critique, but by how agencies change their proposals in response to Advocacy's recommendations. The amount of regulatory

savings resulting from changes measures Advocacy's impact. We estimate that in FY 1998, changes made to regulatory proposals resulted in \$1.5 billion in reduced regulatory savings. In FY 1999, the savings were \$5.3 billion. Attached to this testimony is the *Executive Overview* of our FY 1999 Report to Congress on agency compliance with the RFA, wherein these savings are detailed and documented. Also attached is a graph illustrating these savings. The importance of this report is that it is the first time we have been able to quantify these regulatory savings.

The savings in FY 1999 represent a return of \$1,060 for every dollar of Advocacy's budget, which we estimate to be in the vicinity of \$5 million, including salaries and benefits. Having said this, Advocacy recognizes that these savings did not result solely from Advocacy's work. Advocacy partners with small entities, their trade representatives, with OIRA, and, yes, even with regulatory agencies to effect changes in regulations. These savings are the result of these partnerships. And in another sense, these savings also measure increased agency compliance with the RFA.

#### **Committee Questions**

This then brings me to the questions raised in your letter of invitation. It also brings me back to the question I raised in the beginning of this testimony: how to measure independence? I have tried to address this issue thus far by describing our work and impact under existing authority. Let me now be more explicit.

In my view, independence cannot and should not be measured by how often the Chief Counsel disagrees publicly either with the Administration or with the Congress. Independence needs to be measured by the totality of the work of the Office of Advocacy

on behalf of small business. There will, of course, always be skeptics about the effectiveness of in-house early negotiations on public policy issues, but it is difficult to refute the truism that early access to policy deliberations is the most effective way to influence an outcome. Some negotiations and deliberations are public and produce important changes, as evidenced by meetings we organized for small businesses with IRS and Treasury officials. Others are not but can be equally successful.

*Sufficient Independence?*

Where is the evidence that the Office does not have sufficient independence?

Where has the Office failed to represent small business? I will be the first to admit that we may have missed some regulations and that we have not used our *amicus curiae* authority in every instance where some thought we should. We limit our involvement to those issues where we can make a difference or where small business interests are underrepresented. But this is not a constraint on independence. It is a *resource* constraint – not a policy or partisan political constraint on the Office's independence.

*Independent Commission?*

Should the functions of the Office of Advocacy be transferred to an independent commission? I and my Deputy have both worked for two or three collegial bodies in our professional careers and both are of the view that independent commissions are not panaceas for efficient decision making or for enhancing accountability to the Congress or to the constituencies they serve.

Let's examine the question in the context of the Small Business Advocacy Review Panel process. Once a panel is convened, it has 60 days to develop a report. This time period is short but helps focus the work of the agency and the panel to bring

issues to closure. Often negotiations continue up until the last minute. If a Commission has to vote on the report, can the work of the panels be completed within 60 days? If there is a minority opinion by the Commission, how will this be addressed? Will the involvement of a Commission delay the process and add cost to the work of the panel and the regulatory agency? If the answer to any of these questions is “yes,” will this undermine agency commitment to the RFA? And before a panel is convened, will the Commission have to vote on the names of the small entities submitted to the convening agency to be consulted by the panel?

Additional questions. Creating an independent entity would clearly alter the working relationship of the commission with regulatory agencies by escalating informal negotiations to formal decision making on regulatory comments, etc. by the commission. Would early access to policy deliberations be lost since every decision would be subject to a commission vote rather than informal negotiations? How would this alter what is now a *cooperative* working relationship with non-regulatory agencies such as the Bureau of the Census which provides data essential to the Office’s research and regulatory responsibilities? Could debates and votes on commission regulatory comments be sufficiently timely to meet deadlines for public comment? Usually I submit comments and positions to Congress within 24 hours of receipt of the request. Would a commission be able to respond as quickly? As effectively? We think not.

*Authority for Agency-Wide RFA Compliance Regulations?*

Under existing authority, the Office of Advocacy does not have a mandate to promulgate regulations that force compliance with the RFA. GAO has recommended that the Office be given such authority. We have issued guidance to agencies on how to

comply with the law but have stressed that each agency must rely on the advice of its own General Counsels how to mesh compliance with RFA with the diverse array of congressional mandates each agency has to fulfill. I am confident that with existing resources we could not undertake such a comprehensive rule-making, and I have serious reservations about the wisdom of doing so. Current authority gives the Office of Advocacy and regulatory agencies the flexibility to respond to dynamic changes that are occurring in the small business sector of the economy. The RFA admonishes us to avoid one-size-fits-all regulations and I have reservations that a one-size-fits-all compliance regulation might also result in harm to small business in the long run.

### Conclusion

Before concluding this testimony, I have a few additional questions about the staff's draft of legislation to create an independent commission that deserve some mention. Was there a reason for eliminating the functions

- to study and analyze financial markets?
- to analyze credit and equity availability for minorities as well as to evaluate federal programs to help minority businesses?

Was it merely an oversight that the *amicus curiae* language of SBREFA was not adopted? The SBREFA language strengthened the authority of the Chief Counsel and has been relied on by Advocacy in deliberations with regulatory agencies.

Beyond this, it is important to point out that small business historically has opposed the formation of new bureaucracies, even when the bureaucracy would have helped them. There clearly would be a cost to establishing an independent commission

which needs to be considered. The issue of cost is particularly relevant since most of the authority the draft bill proposes to be given to the Commission already exists in the Office of Advocacy. (An example is subpoena power. On this point, Advocacy has the authority to require agencies to provide information and has exercised this authority on several occasions and has also used the petition provisions of the Administrative Procedures Act to seek regulatory reforms.) Any new authority could be given to the Office of Advocacy with little, if any, budgetary implications.

As I mentioned earlier, constraints on the Office of Advocacy are uniquely resource constraints. When the Office was first established in 1976, it was given a line item budget, including a budget for research. This line item was eliminated in recent years, except for economic research. Another constraint on the work of the office has occurred when the position of Chief Counsel remained vacant for a number of years. These problems are easily fixed by the Congress and I believe Senator Bond's bill addresses both of these concerns.

Thank you for the opportunity to address such important issues that affect small business. I appreciate your concern and interest in the work of the Office of Advocacy, as well as your efforts on behalf of small business. I will be happy to provide any additional information you need.

Attachments:

1. List of Independent Positions
2. Executive Overview – FY 99 Report on Agency Compliance with the RFA
3. Chart on Regulatory Savings
4. Letters from Small Business Stakeholders



# **CHIEF COUNSEL FOR ADVOCACY INDEPENDENT POSITIONS BEFORE CONGRESS**

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**OPPOSED PROVISIONS OF THE FEDERAL ACQUISITION REFORM ACT**

**OPPOSED CONTRACT STREAMLINING WITHOUT SMALL BUSINESS PROTECTION**

**SUPPORTED FULL AND OPEN COMPETITION IN GOVERNMENT CONTRACTING**

**SUPPORTED ENLARGED ESTATE & GIFT TAX EXEMPTIONS**

**★ SUPPORTED TARGETED ESTATE TAX RELIEF FOR SMALL BUSINESSES**

**SUPPORTED INDEXING ESTATE AND GIFT TAX PROVISIONS**

**★ SUPPORTED INCREASED EXPENSING FOR SMALL BUSINESSES**

**★ SUPPORTED FULL RESTORATION OF HOME OFFICE DEDUCTION**

**★ SUPPORTED DEDUCTIONS FOR STORAGE OF SAMPLES AT HOME**

**SUPPORTED PRODUCT LIABILITY REFORM**

**SUPPORTED "TIERING" THE MINIMUM WAGE INCREASE**

**SUPPORTED INDEPENDENT CONTRACTOR CLARIFICATION LEGISLATION**

**OPPOSED PATENT "REFORMS" SUCH AS PRE-ISSUE PUBLICATION**

**★ SUPPORTED EXTENSIVE REGULATORY REFORM - (SBREFA)**

**OPPOSED CONTRACT BUNDLING**

**★ SUPPORTED PENSION REFORM FOR SMALL BUSINESS (SIMPLE, SAFE AND 401k)**

**★ 100% DEDUCTIBILITY OF HEALTH INSURANCE BY THE SELF-EMPLOYED**

**★ SUPPORTED SUBCHAPTER S CORPORATION REFORM**

**SUPPORTED EXTENSION OF SMALL BUSINESS COMPETITIVENESS DEMO PROGRAM**

**★ SUPPORTED INCREASED PROCUREMENT GOAL ( 23% BY AGREEMENT)**

**★ SUPPORTED EXPANSION OF TARGETTED SMALL BUSINESS CAPITAL GAINS**

**OPPOSED CONSOLIDATING DOD MOVING AND TRAVEL CONTRACTS**

**OPPOSED TIGHTENED BANKRUPTCY REQUIREMENTS ON SMALL BUSINESS**

**SUPPORTED CATALOGUE OF ALL SMALL BUSINESS REGULATORY REQUIREMENTS**

**SUPPORTED WAIVER OF FINES FOR FIRST OFFENSE IN EXCHANGE FOR CORRECTIVE ACTION**

"★" Indicates instances where the Administration later supported, at least in part, Advocacy's position.

6/20/00

**ANNUAL REPORT OF THE CHIEF COUNSEL FOR ADVOCACY  
ON IMPLEMENTATION OF THE REGULATORY FLEXIBILITY ACT  
FISCAL YEAR 1999**

**EXECUTIVE OVERVIEW**

**Introduction**

In 1980 Congress enacted the Regulatory Flexibility Act (RFA) with a mandate to federal regulatory agencies to analyze the impact of their regulations on small entities and to consider alternatives that would be equally effective in achieving public policy goals without unduly burdening small entities.

In 1996 Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA) which amended the RFA in several significant ways. First, it gave the courts jurisdiction to review agency compliance with the RFA, thus providing for the first time an enforcement venue to ensure agency compliance with the law. Second, it mandated that the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) convene Small Business Advocacy Review Panels to consult with small entities on the impact of regulations before the regulations are published for public comment. This formalized for these two agencies a process for involving small entities in the agencies' deliberations on the effectiveness of regulations that would impose mandates on them. Third, it reaffirmed the authority of the Chief Counsel of Advocacy to file *amicus curiae* (friend of the court) briefs in appeals brought by small entities from agency final actions.

By the end of Fiscal Year 1999, SBREFA had been in effect for a little over three years. It is clear that the 1996 amendments are having a major impact on the work of federal agencies. According to agency records and/or trade association data, the changes made to regulations in order to comply with RFA reduced their cost by almost \$5.3 billion during Fiscal Year 1999. Moreover, there is a beneficial impact from small entities increasingly seeking judicial review of agency compliance with the RFA, often with significant success. Agencies are watching court decisions closely and are increasingly seeking assistance from the Office of Advocacy in the earliest stages of regulatory development, thus expanding the work of Advocacy in pre-proposal activities to minimize harmful small business impacts.

**The Role of the Office of Advocacy**

Congress created the Office of Advocacy within the U.S. Small Business Administration in 1976 to be an *independent* voice for small business in the formulation of public policy. The office was given, among others, very specific statutory mandates to:

- examine and report on the constantly changing role of small business in the economy;

- measure the direct costs and other effects of government regulation on small business;
- determine the impact of the tax structure on small businesses;
- study the ability of financial markets and institutions to meet small business credit needs; and
- recommend specific measures for creating an environment in which all businesses will have the opportunity to compete on a level playing field.

The RFA requires the Chief Counsel to report annually to the President and the Congress on agency compliance with the law and the SBREFA made the Chief Counsel a statutory member of the EPA and OSHA Small Business Advocacy Review Panels.

Essential to these mandates:

- research on small business trends in the economy;
- independent analyses of the impact of regulations on small business;
- two-way communications with small business trade associations and leaders throughout the country on regulatory impacts and emerging issues;
- *ad hoc*, industry-specific roundtables to discuss small business concerns; and
- meaningful small business participation in the development of public policy.

*Regulatory Issues—More Diverse and More Complex*

In recent years, the economy has been extremely dynamic—constantly churning—with technology changing industry structure at an extremely rapid pace, creating new challenges for analyses of regulatory impacts on small business. Small business is a major force in the changing economic landscape, contributing major technological innovations that are spurring growth in the economy and creating most of the new jobs. As such, the continued viability of small business must be ensured.

As the economy becomes more technology based, not surprisingly regulations are dealing with more and more complex societal issues. If regulations are unduly burdensome, however, they could dampen the economic growth experienced in recent years. Therefore, regulatory impact analyses are taking on an ever increasingly important role in public policy deliberations.

*Data Sources—Statistical As Well As Anecdotal*

Policy makers are increasingly aware that the key to rational decision making is data. To provide answers to inquiries about small business issues, the Office of Advocacy contracts with independent entities for research on a wide range of emerging public policy issues, such as the cost of regulation, contract bundling, etc., as well as research on industry specific economic impacts. It also maintains a database, unique in the federal government, on small business characteristics. It has recently designed a new database—the Business Information Tracking Series (BITS)—in cooperation with the Bureau of the Census, that allows researchers to track specific companies through various stages of growth. This database will provide some important insights on public policy needs. For information on Advocacy's most recent research reports and papers visit Advocacy's home page at [www.sba.gov/advo](http://www.sba.gov/advo).

In addition to this unique *statistical* data which provides an historical perspective on small business trends, current or *anecdotal* data are compiled through discussions with small businesses, their representatives and economic experts. *Ad hoc* industry specific roundtables and conference calls are held periodically to identify emerging issues and small business impacts. The Office of Advocacy has also hosted focus group discussions on emerging trends with leading futurists, prominent small business leaders, banking experts and researchers, and industrial organization economists.

**Impact of SBREFA—The Role of Data and Savings Achieved**

SBREFA is having a major impact on the regulatory culture. Of this, Advocacy has no doubt. There is a marked increase in requests for Advocacy's assistance prior to publication of a rule for public comment. And Advocacy is playing a more important role in the 90-day review of major rules conducted by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget, a review that is mandated by Executive Order 12866. This is a change from Advocacy's pre-SBREFA experience. There is also increased willingness on the part of regulatory agencies to participate in Advocacy's *ad hoc* industry roundtables where discussions focus on current problems. These roundtables play an important role in opening up dialogue between small entities and government regulators. There is little doubt that this changing culture is the result of the SBREFA amendment that authorizes the courts to review agency compliance with the RFA. This change in the law provides a significant incentive for agencies to do what they can to avoid legal challenges to their rules.

A few agencies, such as the National Marine Fisheries Service (NMFS), the Health Care Finance Administration (HCFA) and the Agricultural Marketing Services (AMS), have instituted some changes in response to RFA mandates but the impact of the changes is not yet clear. However, any change could be significant since industries regulated by these agencies are part of the basic structure of the economy and are industries dominated by small entities. While regulations affecting these industries are not front page news, regulatory impacts can often mean the difference between survival and extinction.

Having said this, it is important to note that this cultural change is by no means uniform among regulatory agencies. The largest hurdle to overcome remains agency resistance to the concept that regulatory alternatives that are less burdensome on small business may, in fact, be equally effective in achieving public policy objectives. Economic data thus become the *force majeure* in overcoming this resistance. And the value of economic data has been demonstrated time and again in the work of the Small Business Advocacy Review Panels where data has resulted in creative solutions to public policy mandates.

#### *Small Business Advocacy Review Panels—Lessons Learned*

Since enactment of SBREFA, work has been completed on 18 Small Business Advocacy Review Panels: 15 EPA panels and 3 OSHA panels. Approximately 300 small entities have been consulted on a very diverse range of rules. Independent data on the impact of regulatory proposals have played an important role in the deliberations of the panels. The additional input from small entity representatives spotlighted real life consequences of proposals under consideration. Regulations that emerged from this process have been changed in response to the information provided and are, for the most part, less burdensome than the regulations originally considered. In one instance, a regulation was withdrawn entirely because the data clearly demonstrated that there was no need for national regulation.

It is important to emphasize that, although the regulations that emerged from the panels' deliberations were less burdensome on small entities, *public policy objectives were not compromised*. The lessons learned are the importance of data to rational decision making in solving societal problems *and* how valuable information on real world small business impacts can be in identifying equally effective regulatory alternatives.

Although work on the panels has been productive, it has also been labor intensive. It is estimated that Advocacy alone has spent an average of 500 to 600 hours on each panel for a total of between 3,500 and 4,000 hours on the panels completed in Fiscal Year 1999. Work on two OSHA panels completed this year—given the scope of the regulations considered—probably consumed more than the average.

#### *Regulatory Savings*

The impact of SBREFA goes beyond just modifications to the rules considered by the EPA and OSHA panels. As stated earlier, agencies logically wish to avoid judicial challenges to their rules and are taking greater care to comply with the RFA. The potential for judicial review provides a great incentive for agencies to integrate the comments of Advocacy and others into their deliberations. Agencies, to their credit, have changed rules to minimize burdens on small entities and the changes made in FY 99 reduced the potential cost of regulations by almost \$5.3 billion. The specific cost savings are detailed in the attached table.

#### Advocacy Activities in Fiscal Year 1999

Advocacy's activities primarily take the form of public record communications with agencies on the impact of their regulations on small business and whether their regulatory justifications and analyses of alternatives comply with the RFA. This is in addition to Advocacy's work on EPA and OSHA panels and to its increasing workload involving pre-proposal consultations with regulatory agencies. This year's report highlights some of those public record communications to illustrate the range of issues Advocacy must address. Advocacy targets its resources to those regulations where it can make a difference or where the small business interest is significant but underrepresented in the regulatory process. To accomplish this, Advocacy reviewed over 1,300 proposed and final rules and submitted 76 formal comments for the public record.

Advocacy also testifies before Congress and agencies on public policy issues such as agency compliance with the RFA. Finally, this year's report contains a description of Advocacy's activities involving two entities not subject to the RFA—the Internet Corporation of Assigned Domain Names and Numbers (ICANN) and the U.S. Postal Service. Advocacy became involved with these two entities because of their market dominance and because their activities are having a major impact on small businesses. Advocacy is of the view that small businesses need a spokesperson to represent them in the proceedings of these two entities.

#### Conclusion

This is the nineteenth report submitted by a Chief Counsel for Advocacy since enactment of the RFA in 1980. It is the fourth report since enactment of the 1996 SBREFA amendments. It should be noted that this year's report is on a fiscal year basis rather than on a calendar year basis. This change was made in order to be consistent with the information that must be reported each year under the Government Performance and Results Act of 1993 (GPRA).

Even a cursory review of the earlier reports will reveal differences. The main differences are the increasingly important role of data in regulatory development and the impact of judicial review. Cost savings can now be documented using the data generated by the regulatory agencies themselves and/or by other third party sources. These savings are the true measure of the RFA's impact.

While the savings are, on the one hand, *good news*, they are at the same time, *bad news*—meaning agencies are still proposing regulations that are burdensome on small business. It is for this reason that Advocacy continues to maintain that the biggest hurdle to overcome is agency resistance to the notion that less burdensome alternatives can be equally effective in accomplishing public policy objectives. It is this concept that needs to be inculcated into regulatory agency deliberations. And it is the concept that will remain the focus of Advocacy's work in the coming years.

March 2000

**IMPACT OF SBREFA AND ADVOCACY ACTIVITIES:  
REGULATORY COST SAVINGS FOR FISCAL YEAR 1999**

The following details rulemaking activities that the Office of Advocacy was involved in during Fiscal year 1999 which resulted in cost savings to small businesses. The combination of yearly savings and one-time savings during this period totals almost \$5.3 billion.

| AGENCY | SUBJECT DESCRIPTION  | COST SAVINGS<br>(ANNUAL OR ONE-TIME)   |
|--------|--|--|
| EPA    | <i>Air Pollution Control from Recreational Marine Engines</i><br><br>This Environmental Protection Agency rule established emissions limits for recreational marine boats. A five year delay was adopted for small mariners to allow them to annualize investments and to take advantage of other cost savings technology.                   | <b>\$3,000,000 in annual savings</b><br><br>Source: The Office of Advocacy, based on EPA's economic analysis in the rulemaking record.   |
| EPA    | <i>Effluent Limitations Guidelines for Industrial Laundries</i><br><br>Rule attempted to reduce toxic discharges from industrial laundries, an industry dominated by small entities. After extensive panel discussions and subsequent public comments, EPA withdrew the proposal because the discharges did not warrant national regulation. | <b>\$103,000,000 in annual savings</b><br><br>Source: The Office of Advocacy, based on EPA's economic analysis in the rulemaking record. The industry estimate, according to the Uniform and Textiles Service Association, is \$200 to \$450 million per year. |
| EPA    | <i>Inventory Update Rule</i><br><br>Rule imposed reporting requirements on chemical manufacturers and importers. Modifications adopted during the regulatory review process resulted in significant changes and exempted natural gas and inorganic chemicals from certain portions of the reporting requirements.                            | <b>\$13,000,000 in annual savings</b><br><br>Source: The Office of Advocacy, based on EPA's economic analysis in the rulemaking record, July 29, 1999.   |

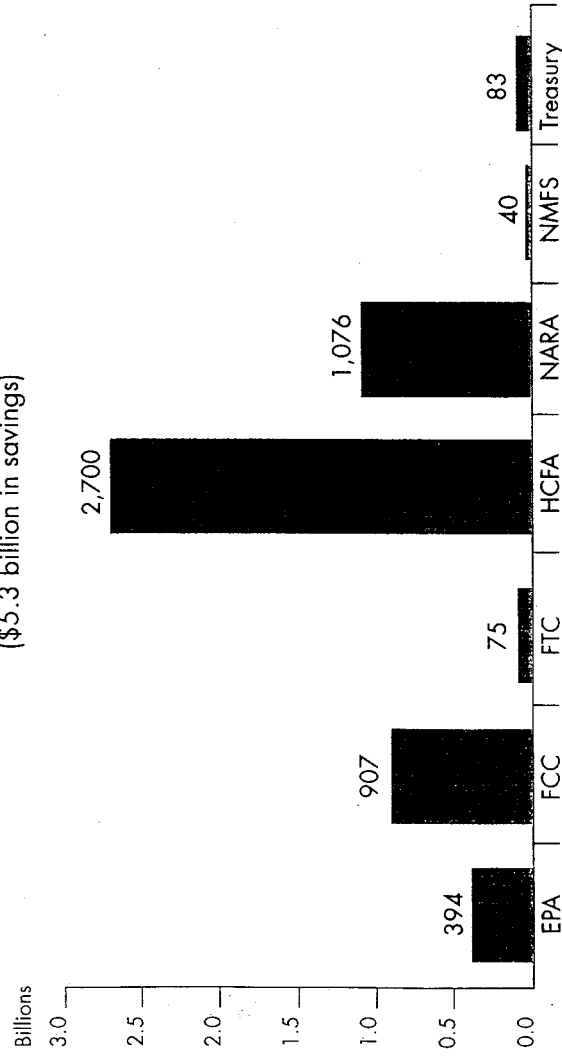
|      |  |   |
|------|--|---|
| EPA  | <i>Radon Health Risk Reduction</i>   | <b>\$275,000,000 in annual savings</b>  |
|      | Rule established a radon water emission standard for community water systems. Rule was changed to reduce costs to small systems participating in community programs to reduce radon in air.  | Source: The Office of Advocacy, based on EPA's economic analysis in the rulemaking record.  |
| FCC  | <i>Customer Proprietary Network Information</i>  | <b>\$476,000,000 in one-time savings</b>  |
|      | The Federal Communications Commission proposed burdensome requirements on local telephone companies for the maintenance of customer information. A coalition supported by Office of Advocacy submitted alternative recommendation, which was adopted by FCC. | Source: FCC, Independent Alliance, and National Telephone Cooperative Association. Estimate reflects the average of the cost savings estimates provided by trade associations.                                |
| FCC  | <i>Truth-In-Billing and Billing Format</i>   | <b>\$431,460,000 in one-time savings</b>  |
|      | Rule was proposed allegedly to simplify and clarify telephone bills. Proposals not only did not clarify bills, they were costly to implement. FCC postponed enforcement of two of the most costly changes, resulting in significant savings.                 | Source: FCC and National Telephone Cooperative Association.   |
| FTC  | <i>Children's Online Privacy Protection</i>  | <b>\$75,000,000 in one-time savings</b>   |
|      | This Federal Trade Commission rule was certified without consideration of alternative regulatory options. After conducting an initial regulatory flexibility analysis, FTC adopted an alternative that resulted in savings.                                  | Source: The Office of Advocacy. FTC estimates that as a result of the rule change, 300 small businesses are excluded from having to comply with the requirements that would have cost each company \$250,000. |
| HCFA | <i>Competitive Bidding for Medical Equipment Suppliers</i>   | Cost savings estimate not available   |
|      | The Health Care Financing Administration proposed bidding forms for Medicare contracts, which were burdensome. The new process limited small suppliers' ability to compete for bids. The forms and process were simplified.                                  |   |



|       |   |   |
|-------|---|---|
| HCFA  | <p><i>Interim Payment System for Home Health Agencies</i></p> <p>Pursuant to congressional mandate, HCFA proposed changes to the reimbursement formulas, which harmed home health agencies. After the Office of Advocacy and others—relying on Advocacy’s critique of the rules—intervened, HCFA relented and Congress enacted legislation to correct the problem caused by earlier legislation.</p>  | <p><b>\$1,000,000,000 in one-time savings plus \$260,000,000 in annual savings</b></p> <p>Source: Bureau of National Affairs (Nov. 19, 1999). The legislation saves \$1 billion during the first year, and \$1.3 billion additionally over 5 years, which averages out per year to \$260 million in annual savings.</p> |
| HCFA  | <p><i>Prospective Payment System for Hospital Outpatient Services</i></p> <p>Rule would have imposed new payment system for hospital outpatient services, resulting in significantly reduced payments for low-volume rural hospitals and others. Advocacy recommended changes to the proposal, which Congress considered in crafting a remedy.</p>  | <p><b>\$1,440,000,000 in annual savings</b></p> <p>Source: Bureau of National Affairs (Nov. 19, 1999). The legislation saves \$7.2 billion over 5 years, which averages out per year to \$1.44 billion in annual savings.</p>   |
| ICANN | <p><i>Internet Domain Name Dispute Resolution</i></p> <p>The Internet Corporation for Assigned Names and Numbers proposed a burdensome policy to resolve disputes over “cybersquatting.” Advocacy recommended changes to minimize burden on small entities, which were adopted.</p>   | <p>Cost savings estimate not available</p>  |
| MMS   | <p><i>Determination of Need for the Royalty-In-Kind Program</i></p> <p>The Minerals Management Service proposed elimination of the mining royalty-in-kind program due to lack of participation by small refiners. Office of Advocacy provided information that indicated small refiners did not participate due to inefficiencies in the program. MMS decided to maintain the program, and make 100,000 barrels of oil available to small refiners.</p> | <p>Cost savings estimate not available</p>  |

|                           |  |   |
|---------------------------|--|---|
| NARA                      | <i>Agency Records Center</i>   | <b>\$1,076,000,000 in one-time savings</b>  |
|                           | This National Archives and Records Administration rule would have imposed strict dimensions on size of storage units for federal records in order for firms to be eligible for government contracts. Would have caused major impact on existing small storage companies. | Source: NARA.   |
| NMFS                      | <i>Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan</i>   | <b>\$40,000,000 in annual savings</b>   |
|                           | This National Marine Fisheries Service rule would have reduced scallop fishing. Industry submitted alternative that Advocacy recommended for agency to consider. Commerce Secretary ordered NMFS to implement alternative.   | Source: David Frulla, Esq., counsel to the scallop industry. The estimate reflects the expected revenue that the industry will gain from scallop fishing in the George's Bank area.         |
| NPS                       | <i>Commercial Fishing in Glacier Bay</i>   | Cost savings estimate not available   |
|                           | This National Park Service rule would have prohibited fishing in Glacier Bay, Alaska. Agency provided no information on impact, even though impact was known. Congress provided a buy-out option that NPS then considered in a subsequent analysis.                      |   |
| Treasury                  | <i>Small Business Pension Plans</i>  | <b>\$83,400,000 in annual savings</b>   |
|                           | This Department of the Treasury rule would have imposed significant paperwork burdens on small pension plans. After consultations, paperwork was reduced to one simple form, complicated tests were eliminated, and compliance burden was shifted to third parties.      | Joint Committee on Taxation, United States Congress, H. Report 104-737 at 364. The rule saves \$834 million over 10 years, which averages out per year to \$83.4 million in annual savings. |
| SUBTOTALS:                |  | <b>\$2,239,400,000 in annual cost savings, and</b>  |
|                           |  | <b>\$3,058,460,000 in one-time cost savings</b>   |
| GRAND TOTAL COST SAVINGS: |  | <b>\$5,297,860,000 (almost \$5.3 Billion)</b>   |

### Regulatory Cost Savings, FY 1999 (\$5.3 billion in savings)



Note: Includes annual and one-time savings. NARA = National Archives and Records Administration, NMFS=National Marine Fisheries Service.

Source: Office of Advocacy, U.S. Small Business Administration, from data listed in the *Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act, Fiscal Year 1999*.



Office of Advocacy

May 2000

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AAHOMECARE

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Supporting Quality Health Care Services at Home

*Via Hand Delivery*

June 20, 2000

Jere Walton Grover  
 Chief Counsel for Advocacy  
 Small Business Administration  
 409 Third Street, S. W.  
 Washington, D. C. 20416

**Re: Office of Advocacy Activities with Respect to the Home Care Industry**

Dear Mr. Glover:

The American Association for Homecare (AAH) is pleased to provide the following comments on the health care issues that have been recently addressed by the Small Business Administration's (SBA's) Office of the Chief Counsel for Advocacy (Office of Advocacy). AAH was created by the merger earlier this year of the home care section of the Health Industry Distributors Association (HIDA), the Home Health Services and Staffing Association (HHSSA), and the National Association for Medical Equipment Services (NAMES). AAH represents all segments of the home care industry, including suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) and home health agencies. Our members are mostly small businesses who serve patients in their homes. A significant number of the patients served by AAH members are Medicare beneficiaries who are elderly, frail and sick.

On August 5, 1997, President Clinton signed into law the Balanced Budget Act (BBA) of 1997. This legislation contained numerous provisions that required the Health Care Financing Administration (HCFA) to implement a number of cost cutting measures directed at providers and suppliers of home care services and equipment. AAH members

were directly and significantly impacted by these provisions. The BBA created new Medicare payment methodologies for home health agencies (HHA's) and included a requirement that HHA's obtain surety bonds in order to bill the Medicare program. The BBA also expanded HCFA's "inherent reasonableness" authority to adjust Medicare payment rates for Part B items and services (excluding physician services). HCFA also was given authority to conduct competitive bidding demonstrations for DMEPOS items and services.

The Office of Advocacy officially commented on the small business impact of HCFA's proposals to implement these provisions, including HCFA's adherence to the requirements of the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA) and the Paperwork Reduction Act (PRA). In each case, the comments submitted by the Office of Advocacy served to highlight serious procedural and substantive flaws in the manner in which HCFA proposed to implement the BBA requirements. The Office of Advocacy also highlighted the impact these proposals would have on our members, most of which are small business providers and suppliers of home care equipment and services. Our comments on the issues addressed by the Office of Advocacy follow.

#### **Inherent Reasonableness**

As we stated above, the BBA expanded HCFA's authority to adjust payment rates for Medicare Part B items and services using inherent reasonableness (IR). While HCFA's IR authority existed pre BBA, the BBA permitted HCFA to make payment adjustments of as much as 15% without using the notice and comment procedures that had been required under the prior law. For payment adjustments greater than 15%, however, the BBA required HCFA to use notice and comment procedures. HCFA chose to implement this extraordinary new authority by publishing an interim final rule rather than a proposed rule as required by the APA. The interim final rule delegated to the Medicare carriers authority to perform IR adjustments of up to 15% a year. Moreover, in the preamble to the interim final rule, HCFA stated that it viewed its expanded IR authority very broadly. According to the preamble, HCFA could effect payment reductions greater than the 15% limit in the BBA, provided it implemented the reduction in 15% or less increments over a number of years.

The Office of Advocacy filed comments in 1998 raising numerous procedural flaws in the manner HCFA chose to implement its IR authority. The comments addressed HCFA's failure to publish a notice of proposed rulemaking (NPRM) as required by the APA. As the comments made clear, there were no legal grounds to justify this "procedural shortcut." HCFA's actions circumvented the public debate on a significant expansion of HCFA's authority. Equally important, because the RFA does not apply to interim final rules, HCFA avoided performing an RFA analysis. The Office of Advocacy's comments raised the level of the debate over the procedural fairness of HCFA's actions and the consequences for small business healthcare entities and the Medicare beneficiaries they serve. Last year, Congress asked the Comptroller General to review HCFA's actions with respect to IR. That report is expected this summer.

### **Competitive Bidding**

As we noted above, the BBA also authorized HCFA to conduct "competitive" bidding demonstrations for DMEPOS items and services. The first demonstration began in Polk County, Florida on October 1, 1999. A second demonstration is scheduled to begin in San Antonio, Texas on January 1, 2001. Prior to the effective date of the Polk County demonstration, the Office of Advocacy effectively voiced its concerns about the impact of the demonstration design on small business DMEPOS suppliers. Importantly, HCFA requested expedited review under the PRA of the bidding forms that it proposed to use in the demonstration even though it could not meet the threshold requirements for expedited PRA review. In comments filed with the Office of Management Budget (OMB), the Office of Advocacy noted that HCFA was again avoiding the important debate on the consequences of its actions. The Office of Advocacy also participated in meetings with OMB, HCFA, and industry representatives during which HCFA publicly responded to industry concerns.

### **HHA Surety Bonds**

The Office of Advocacy was instrumental in highlighting that the implementation of the HHA surety bond requirement under the BBA was onerous on HHA's. In its comments, the Office of Advocacy raised concerns about the additional regulatory requirements placed on HHA's by HCFA's interpretation of the BBA surety bond provisions. Those concerns were later realized, as HHA's, the majority of which qualify as small businesses, were unable to secure a surety bond for their business. The regulation was suspended until an in-depth review could be done on the additional requirements. The regulation is expected to go into effect this fall, and include many of the recommendations of the SBA.

### **Other Regulatory Initiatives**

#### **Tuberculosis**

The Office of Advocacy provided extensive support to the home health industry on the Occupational Safety and Health Administration (OSHA) tuberculosis proposed rule. The proposed rule highlighted the dramatic decrease in the numbers of tuberculosis reported across the country. OSHA, however, stated that the regulation was still needed for "a potential threat" in later years. The Office of Advocacy was effective in highlighting the changes undertaken by all health care providers to ensure proper treatment of tuberculosis outbreaks. Its comments also emphasized that the result of those changes were the reason for the decline in the number of TB cases. The Office of Advocacy formed an invaluable coalition of health care providers who provided a strong united front on the issue of further requirements on TB. The proposed rule may be released later this year with changes.

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AAHOMECARE

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**Ergonomics**

The Office of Advocacy also provided support for the home care industry's concerns with the Ergonomics program proposed by OSHA. The Office of Advocacy raised the concern that the cost of the proposed regulation is underestimated, and that the burden of multiple regulations on an industry must be considered before mandating new ones. The Office of Advocacy is recommending regulatory guidance and outreach as an alternative to the costly proposed ergonomic requirements. Hearings on the proposed ergonomics regulation are scheduled to conclude in July, and a final rule could be published as early as this fall.

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We hope that you find the forgoing comments a useful summary of the comments and activities of the Office of Advocacy with respect to providers and suppliers of home care services and equipment. Please feel free to contact me at (703) 836- 6263 should you have any further questions.

Sincerely yours,



Asela M. Cuervo  
Vice President for Government Affairs

JUN 20 '00 13:59 FR WATERMAN &amp; ASSOCIATES202 698 8188 TO 2056928

P.02/04



**AMERICAN FOUNDRY SOCIETY**  
publishers of modern casting

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June 19, 2000

Mr. Jere W. Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20516

Dear Mr. Glover:

In recent years, under your direction, the Small Business Administration's (SBA) Office of Advocacy, has proven to be a strong ally of the American Foundry Society (AFS) on many vital issues to our industry.

AFS serves as the largest and oldest association representing the metalcasting industry. Nationally, there are nearly 3,000 foundries employing over 230,000 people. Foundries are small business enterprises producing thousands of tons of different castings by recycling and utilizing metals such as aluminum, brass, bronze, iron and steel. In fact, 80 percent of foundries have fewer than 100 employees. The majority of these small shops are family-owned businesses that have been passed down several generations.

The Office of Advocacy has been a consistent and reliable source for our association to turn in order to obtain intervention in key rulemakings. Your staff has specifically assisted and intervened on our behalf regarding the Environmental Protection Agency's secondary aluminum MACT and the Occupational Safety and Health Administration's onerous ergonomics proposal.

Through the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, your office has provided small business a stronger voice in the federal regulatory process. In fact, following the small business panel session on ergonomics, the Office of Advocacy, brought to light some major deficiencies with OSHA's draft ergonomics proposal and the difficulty industry will have to comply with the rule.



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6/19/00  
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The in depth cost analysis undertaken by your office on OSHA's ergonomics proposal placed the price tag to implement the rule at \$18 billion, well above OSHA's cost estimate of \$4.2 billion. Although you are a part of a government agency, your office did not shy away from unveiling some major problems with OSHA's ergonomics proposal.

On behalf of the 14,000 individual members of AFS, we applaud the Office of Advocacy's continued commitment and hard work for the metalcasting industry and small businesses across the country.

Sincerely,



Don E. Gaertner  
AFS President

06/19/00 13:28 FAX 202 737 7565

BRAND &amp; FRULLA

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**BRAND & FRULLA**

A PROFESSIONAL CORPORATION  
923 FIFTEENTH STREET, N.W.  
WASHINGTON, D.C. 20005

June 19, 2000

TELEPHONE: (202) 662-9700  
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**VIA FACSIMILE AND FIRST-CLASS MAIL**

Jere Glover, Esquire  
Chief Counsel  
Office of Advocacy  
United States Small Business Administration  
409 Third Street, S.W.  
Mail Stop 3113  
Washington, D.C. 20416

Dear Jere:

This is just a brief letter to thank you and your staff for their continuing interest and often able assistance in the variety of regulatory flexibility matters in which our firm is involved.

More specifically, we have sought your guidance, and often intercession (both at the agency level and once – quite effectively – in court), on fisheries issues regulated by the Commerce Department, home health care related issues regulated by the Department of Health and Human Services, and now Clean Water Act permitting related issues regulated by the U.S. Army Corps of Engineers. And, from our attendance at the periodic round tables that your office helpfully (and often presciently) convenes, I am able to gain some understanding of the many other matters and issues your office is handling, with its relatively small, but capable and dedicated staff. Your workload must be especially heavy now, as the Administration seeks to finalize the many significant regulatory initiatives that have been in development for years.

Your office and capable and caring staff really do provide an important forum for small businesses from around the country to seek to address the potential economic impact of regulatory initiatives and, as I know is especially important to you and your staff, ways to have these measures tailored so that they achieve statutory objectives with a reduced economic and regulatory cost.

Thank you again, and please keep up the good work.

Sincerely,

  
David E. Frulla

Collier Shannon Scott

Collier Shannon Scott, P.L.L.C.  
Washington Harbour, Suite 400  
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Washington, DC 20007  
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June 20, 2000

Jere W. Glover, Esq.  
Chief Counsel for Advocacy  
U.S. Small Business Administration  
409 Third Street, S.W.  
Washington, D.C. 20416

Dear Jere:

Our firm represents approximately 60 trade associations, covering a wide array of industries that constitute a significant percentage of our domestic economy. For many of these trade associations, we serve as legislative and regulatory counsel. We have been privileged to "provide the hall" for the Office of Advocacy's monthly Environmental Roundtable meetings.

Our trade association clients have enjoyed an excellent working relationship with Office of Advocacy for nearly 20 years, beginning with the Environmental Protection Agency's ("EPA") gasoline lead phasedown rulemaking. Led largely throughout this nearly two decades by Kevin Bromberg, the Office of Advocacy has been able to assemble and submit small business data to EPA, comment forcefully and effectively through interagency channels with EPA, and affect the outcomes of many EPA rules. In many respects, the enactment of the Small Business Regulatory Enforcement and Fairness Act ("SBREFA") codified what Kevin and others in your office largely had been doing with EPA and other agencies on a working relationship basis.

Some examples of the Office of Advocacy's effectiveness with EPA that readily come to mind include: the 10-year phase-in under the underground storage tank program; alternative format reporting under the Toxics Release Inventory; group stormwater permitting; reworking the metal parts and machinery effluent limitations guideline rulemaking; and, paperwork reduction efforts, such as eliminating Tier I or II reporting for retail gasoline outlets. Your office certainly has had many more notable accomplishments in representing small business interests before EPA.

The Office of Advocacy increasingly is playing a more effective role with the Occupational Safety and Health Administration ("OSHA"). Anita Drummond successfully organized small business users of metal removal fluids, who were strong advocates on an OSHA Standards Advisory Committee. The Office of Advocacy also has been a tremendous assistance to small business by helping to guide our trade association clients through the very complex, pending OSHA ergonomics rulemaking.

Jere W. Glover, Esq.  
June 20, 2000  
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Collier Shannon Scott

The best feature of the Office of Advocacy has been that you and your staff are always accessible to our small business clients and that you and your staff have advocated for small business with tremendous zeal. Many of our small business trade associations have limited budgets, so they have particularly appreciated your office's ability to collect and analyze technical data that make a difference in agency proceedings. Further, while the evolving SBREFA process has not been perfect, the Office of Advocacy has made a difference on the review panels.

Our small business trade association clients appreciate this opportunity to share their views on the Office of Advocacy.

Sincerely,



JEFFREY L. LEITER



June 20, 2000

Mr Jere W. Glover  
Chief Counsel for Advocacy  
Small Business Administration  
409 Third Street SW  
Washington DC 20416

Dear Jere:

On behalf of the small business refiners in this country, we would like to thank you for your untiring and effective efforts over the last several years with regard to the Environmental Protection Agency's regulatory activities on both gasoline and diesel sulfur. The process is not over yet, but we want you to know that your interest and your advocacy have already had a significant impact on our prospects for survival in this extremely competitive industry and in the face of devastating environmental costs.

As you know, small business refiners have no formal organization to represent their interests and often feel that their concerns are different from those of the two major industry associations.

Some 12 to 15 small business refiners produce gasoline and were expected to be severely burdened by EPA's Tier 2 rulemaking on gasoline sulfur. With your help, eight of us formed an ad hoc coalition and participated in the Tier 2 SBREFA panel process beginning in the fall of 1998.

- Under your direction we participated in a series of meetings, conference calls and information exchanges that enabled us to identify priorities and common concerns, develop a coordinated small business refiner position, examine related GATT issues and thus to work effectively with EPA. Because of your interest in and confidence in us, we developed a level of trust and communication with EPA, OMB, DOE and others involved that is unprecedented in our experience.
- The final Tier 2 rule, issued in December 1999, included an interim compromise and delayed final deadline for small business refiners, as well as the prospect of an additional hardship extension if required.
- I can say with certainty that small business refiners would have been severely disadvantaged and some would have gone out of business without SBA advocacy on this rulemaking.

370 17<sup>th</sup> Street, Suite 5300 / Denver, Colorado 80202-5653 / (303) 628-3800

Mr. Jere W. Glover  
June 20, 2000  
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An estimated 22 small business refiners produce diesel fuel; many will be even more severely impacted by the EPA diesel sulfur rulemaking currently in process. Because of the severe sulfur intolerance of new engine technology there appears to be less room for compromise. As a result, SBA advocacy is even more essential.

- This time, with your assistance and because of the successful example of the Tier 2 effort, small refiners developed an ad hoc diesel sulfur coalition that includes 14 small businesses and one association representing 4 west coast small businesses. We participated in a short, concentrated SBREFA process at the end of 1999 and beginning of this year.
- Again, SBA initiated group discussions, suggested questions and areas for compromise, worked hard to understand the different circumstances of individual companies, briefed us on strategic approaches and arranged meetings on our behalf with other key government officials.
- In addition, we know that you, Jere, personally met with senior EPA officers to make sure that they understood the potentially disastrous impact of the diesel rule on our small business.
- Some of our ad hoc coalition can say with certainty that unless the final rule, which is expected by the end of this year, includes special small refiner provisions and/or unless we have some assistance in accessing the capital needed some, they will have to shut down. Although it would not be the only solution, an increase in the maximum SBA loan guarantee would, as you know, be a great help to some of our group.

We look forward to continuing to working with you. Your continued advocacy on our behalf is, frankly, one of the few bright spots on the small business refiner horizon.

Very truly yours,

GARY-WILLIAMS ENERGY CORPORATION



Sally V. Allen  
Vice President  
Administration & Governmental Affairs

SVA:cwk

JUN 19 2000 1:38 PM

NMMA

NO. 2141 P. 2

National  
Marine  
Manufacturers  
Association

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June 16, 2000

Mr. Jere Glover, Chief Counsel  
Office of Advocacy  
US Small Business Administration  
409 Third Street SW Suite 7800  
Washington DC 20416

Dear Jere,

On behalf of the small businesses of the National Marine Manufacturers Association, I would like to thank you for the continued assistance offered by the Small Business Administration's Office of Advocacy regarding the EPA plan to regulate recreational marine stern drive / inboard engines. As you are aware, the US recreational marine stern drive / inboard industry consists of approximately ten companies, nine of which are considered small businesses. For the most part these companies have little or no experience in representing their interests with an EPA rulemaking. Your office has been a great help in assisting both these companies and the NMMA.

Throughout this SBREFA process, the staff in your office continues to work closely with our small entity representatives to enable them to effectively respond to the costly, burdensome and, in some cases, ridiculous requirements being currently considered by the EPA. Over the past year, the Office of Advocacy has been instrumental in helping our members raise serious concerns regarding EPA's plans, and as a result, EPA has decided to delay its plans to propose a rule for at least a year.

Our small business members appreciate the hard working staff in your office, and are grateful to know that at least one branch of the Administration is committed to helping small businesses. I look forward to continue working with your office on these important issues. If you have any questions, please call me at 202-721-1604.

Sincerely,



John McKnight, Director  
Environmental and Safety Compliance





National Mining Association  
Institution for America's Future

Mr. Jere Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, S.W.  
Washington, D.C. 20416

June 19, 2000

Re: Advocacy's Significant Impact on Small Miners

Dear Mr. Glover,

I am writing to express my sincere appreciation for your hard work as the Chief Counsel for Advocacy of the Small Business Administration (SBA). Advocacy fights for the rights of small mining companies by insisting that Federal agencies follow Congressional mandates in the Regulatory Flexibility Act. For example, after contacting the Labor Department and supplying them with information showing that their proposed black lung regulations violate the RFA, the Department performed a regulatory flexibility analysis, which demonstrated that the proposal will significantly harm small businesses.

In *Northwest Mining Association v. Rabbitt*, Advocacy filed a friend-of-the-court brief explaining how the Bureau of Land Management's bonding regulations violated the RFA. The Federal court agreed with your arguments, and ordered the regulations sent back to BLM with instructions to comply with the law. Advocacy doesn't quit, either. When BLM proposed comprehensive rules (including provisions on bonding) in May 1999, Advocacy followed up its earlier efforts with extensive comments and economic analysis to the agency. Advocacy's comments explain why BLM's own data and analysis prove that the rules will harm small businesses.

These examples show how Advocacy makes a difference in the everyday lives of thousands of small miners who still hold high-paying jobs because of your tireless efforts. I hope that Congress will do its part to fully support Advocacy, and enable it to continue its excellent work protecting small businesses across the nation.

Sincerely,

*Bradford V. Frisby*  
Bradford V. Frisby  
Associate General Counsel  
National Mining Association



Jun-20-2000 11:48 From: NSA

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June 20, 2000

Jere Glover  
Office of Advocacy  
U.S. Small Business Administration  
409 3rd Street S.W.  
Washington, DC 20416

Dear Jere:

This is to let you know how much the National Society of Accountants appreciates and values the efforts of the Office of Advocacy. Our membership administers to the financial needs of several million clients, and the Office of Advocacy has given us much needed support to keep our membership informed about issues facing their small business clients. Through roundtables, written information, and frequent updates on Congressional undertakings, you have ensured that NSA has the information it needs to address critical small business issues. In addition, you and Russ Orban have made yourselves available to NSA for seminars, small business updates, and consultations with NSA's leadership. We value this relationship with your office, and look forward to its continuation in the future.

Sincerely,

A handwritten signature in cursive script that reads "Rick Fein".

Rick Fein  
Director of Taxation and Federal Affairs

A handwritten signature in cursive script that reads "Bernie Phillips".

Bernie Phillips  
Tax Manager

JUN 19 2000 17:32 FR

TO 92056928

P.02/03

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June 19, 2000

**VIA FACSIMILE**

Jere W. Glover  
Chief Counsel for Advocacy  
Small Business Administration  
409 Third Street, S.W.  
Washington, D.C. 20416

Re: Advocacy's Vital Role In The Rulemaking Process

Dear Jere:

Clifford Harvison, President and the National Tank Truck Carriers, Inc., and I were discussing the invaluable role your office played in negotiating an acceptable outcome to the U.S. Environmental Protection Agency's ("EPA") Transportation Equipment Cleaning Industry Effluent Limitation Guideline ("TECI ELG") rulemaking and he asked me to share our thoughts with you.

There is no doubt in our minds that the Federal Government's rulemaking processes are significantly better and more efficient because of your office's independence and perseverance. Without Kevin Bromberg's hard work and insistence that EPA justify with some credible evidence an otherwise unnecessarily and overly-protective proposed rulemaking, the tank truck industry would be burdened with effluent limits that are unachievable and, even if achievable, would not generate environmental benefits.

In 1998, EPA proposed a strict, command-and-control rule, creating effluent limitations for discharges of treated water generated by cleaning the insides of tank trucks. These discharges already are regulated effectively by other EPA rules (e.g., the Pretreatment Program). At significant cost to the industry, NTTC provided hundreds of pages of comments to EPA to identify errors in the Agency's analyses and to justify the industry's continued reliance on best management practices ("BMPs").

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P.03/03

## KELLEY DRYE &amp; WARREN LLP

Jere W. Glover  
June 19, 2000  
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While EPA conceded certain issues, it intended to develop ELG limits for tank truck cleaning operations despite overwhelming evidence to the contrary. However, once Advocacy became involved, EPA could no longer ignore key issues and it was forced to defend its proposal to the Office of Management and Budget ("OMB"). The proposed rulemaking unraveled and EPA became obligated to establish a BMP alternative strongly supported by the industry and key stakeholders, including the Association of Metropolitan Sewerage Agencies (locally-owned treatment works).

The Founding Fathers created our federal government based on a theory of checks and balances. Your office epitomizes that ideal. Without Advocacy's independence and watchful eye, the TECI ELG rule would have resulted in protracted litigation. We believe that a federal court would have remanded the rule to EPA. Your office's involvement cut years and many dollars off that process. The federal government needs more offices that can help achieve such results.

Finally, NTTC recognizes that your office does not have the budget to review every rulemaking with the requisite thoroughness to ensure similar results. That is a shame and a problem that should be rectified by Congress. Judging from the TECI ELG rule, your office truly is a wise investment. In fact, Congress should increase your funding to allow your involvement in all appropriate rulemakings. Fully funding your office ought to be a high priority.

Thanks again for your professionalism and diligence. If you have any questions, please call.

Very truly yours,

KELLEY DRYE & WARREN LLP

By   
Jeffrey S. Longworth

JSL:lt

cc: Kevin Bromberg  
Clifford Harvison

JUN. 19. 2000 3:42PM

NO. 794 P. 2



## National Tooling & Machining Association

9300 Livingston Road, Ft. Washington, MD 20744-4998 (301) 248-6200

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<http://www.ntma.org>

June 19, 2000

Jere W. Glover, Esq.  
Chief Counsel for Advocacy  
Small Business Administration  
409 Third Street, S.W.  
Washington, DC 20416

Dear Jere:

All too often in this town we forget to say, "thank you." I'd like to correct that oversight now.

You and your staff have been such a consistent, dependable and effective resource for the National Tooling and Machining Association and our 2,600 small, family-owned company members, that we have come to take you for granted. It frightens me to think how much more difficult my job would be if it weren't for the Office of Advocacy.

Thinking back over the years, I recall the innumerable telephone calls, faxes, and emails advising us of forthcoming regulations, hearings, stakeholder meetings, conferences and meetings. We have worked together on a wide range of subjects from legislation to taxes to regulatory cost of compliance. You and the professionals in your office have never hesitated to offer advice and assistance whenever we needed help.

Of particular note, I want to express to you our appreciation for being the voice of small business at OMB during those "inner sanctum" meetings wherein you have forcefully presented the realities of the impact of proposed regulations on our community. The burdens placed on small business by the government are great, but they are nowhere near as great as they would be if it weren't for you and the Office of Advocacy.

On behalf of the men and women of the tooling and machining industry of the United States, please accept our deepest thanks and gratitude for all you and your staff have done for us.

Sincerely,

A handwritten signature in dark ink, appearing to read "John A. Cox, Jr.", is written over a circular stamp.

John A. Cox, Jr.  
Manager, Government Affairs





**North American  
Die Casting  
Association**

9701 West Higgins Road  
Suite 880  
Rosemont, IL 60018-4721  
708.292.3600 Telephone  
708.292.3620 Fax

June 20, 2000

Mr. Jere W. Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20516

Dear Mr. Glover:

On behalf of the North American Die Casting Association (NADCA), we would like to take this opportunity to recognize the Small Business Administration's (SBA) Office of Advocacy and your efforts to serve, promote and assist small business. The SBA Office of Advocacy has proven itself to be a dependable source for information and intervention in key agency rulemakings.

NADCA is the sole trade and technical association of the die casting industry. Most die casters are small business operations - 92% of our die casting operations fall under that definition, with 60% employing less than 100 people. Die casters manufacture a large and diverse array of castings that are critical to the success and operation of every major manufacturing sector in the nation from agricultural and mining, energy, and transportation, to aerospace, electronics, and national defense.

For NADCA, the Office of Advocacy was instrumental in turning the tide in the U.S. Environmental Protection Agency's (EPA) efforts to regulate aluminum die casters under air standards being developed for another industry. During the Secondary Aluminum MACT debate, the Office of Advocacy stepped in at the request of the die casting industry and framed the issues of concern relating to EPA's adherence to SBREFA. In the end, SBA negotiated a precedent-setting agreement that will ensure EPA analyzes the die casting industry independently and considers the small business impacts of its actions before imposing new air regulations.

We applaud the Office of Advocacy for the attention and advocacy being paid to small business across the country. Without Mr. Glover and his staff, small business and specifically the die casting industry would be unable to fully participate in the regulatory process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel L. Twarog".

Daniel L. Twarog  
President



June 20, 2000

Jere W. Glover  
Chief Council  
Office of Advocacy  
U.S. Small Business Administration  
Washington, DC 20416

Via Fax Transmission  
202/205-6928

Re: *Northwest Mining Association v. Babbitt, et. al.*

Dear Jere:

2000 Officers:  
President: Paul C. Jones  
Registrar/Recorder: L.E.  
1st Vice President: L. Pat Goodknight  
Geotourist & Associates, Inc.  
2nd Vice President: Eric M. Williams  
Environmental, Inc.  
Secretary: James P. Hestridge  
Prosser, Allen & Host, Inc.  
Treasurer: Allen J. Marler  
Golden Star Resources Ltd.  
Executive Director: Laura Shae

2000 Trustees:  
Dale L. Albert  
Alcohol Sciences Company  
Alan V. Ambrose  
Mesa Arden, Inc.  
Conley G. Anderson  
The Center for Adv. Mtn. & Mnt. Processing  
Douglas D. Bailey  
Golden Sunrise Mining, Inc.  
Earl H. Beshoff  
College of Mines and Earth Resources  
University of Idaho  
Fred W. Brzezinski  
Mine Systems Design, Inc.  
George G. Byers  
Rio Agate Mining Corp.  
R. Lee Chapman  
Bentley Goldstrike Mines, Inc.  
James F. Davis  
Consulting Geologists  
Marshall J. (Marty) Gendie  
Ekland Mining Company, Inc.  
James K. Burr  
Coutur  
Thomas F. Fridge, Jr.  
Facts Mining Company  
M. Craig Hesse  
Franco-Hesside Mining Corp., Inc.  
Gregory A. Kain  
Sunrise USA Corporation  
Richard J. Hall  
Metallica Resources, Inc.  
Anna E. Nite  
Fossil Ash Gold Corporation  
Paul C. Jones  
Royalties Resources Ltd.  
Alan L. Jockelyn  
Gough, Shanahan, Johnson & Wetnam  
James B. Lincoln  
Lincoln Associates, Inc.  
Michael E. McLean  
Sunshine Mining & Refining Co.  
Robert W. Miesak  
AngloGold North America, Inc.  
William B. Prince  
Osney & Whitney LLP  
Robert E. Gulek  
ASARCO Incorporated  
Dan Roberson  
Bodie Mountain Gold Co.  
Clay L. Schuttschler  
Western Mine Engineering, Inc.  
J.K. Cliff Stabner  
Consulting Engineer  
Gary A. Van Houtel  
Nevada Gold Co.  
James E. Voltersting  
Canyon Resources Corp.  
McDonald Gold Project  
Marvin R. Walker  
Edco Bay Minerals Co.  
Eric M. Williams  
Environmental, Inc.

The Northwest Mining Association, through its attorney, Mountain States Legal Foundation, filed suit against the Secretary of the Department of Interior and the Bureau of Land Management in May, 1997, challenging 43 CFR 3809 bonding regulations on the grounds that the agency violated the requirements of the Regulatory Flexibility Act in promulgating these regulations. Soon after filing suit, we contacted the Office of Advocacy seeking support for our efforts to protect small businesses from these burdensome and unnecessary federal regulations.

We worked closely with Shawne Carter McGibbon and Jennifer A. Smith. They helped us and our attorneys to understand the Regulatory Flexibility Act (RFA) and the 1996 Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments. They explained the purpose behind the RFA and SBREFA and the application of the RFA to our factual situation, and the role the Office of Advocacy could play in helping us defend the rights of small businesses in the rulemaking process.

In response, NWMA provided your staff with: 1) a description of the mining industry and the role of small businesses in the mining industry, and how BLM's regulations adversely impacted small mining companies; 2) the factual information your staff needed to understand why the BLM's definition of small mining companies was incorrect and irrelevant to the impact of the regulations; and 3) the factual background and understanding of the mining industry that they needed in order to properly prepare the *amicus* brief filed by the Office of Advocacy.

It is our opinion that the Office of Advocacy's intervention into our case and the subsequently filed *amicus* brief in support of our position challenging the regulations clarified the issues for resolution by the court. The Office of Advocacy's brief was very persuasive to the court's favorable interpretation of the RFA and SBREFA in accordance with congressional intent.

NWMA commends the Office of Advocacy for the roundtable discussions they have held on other regulatory proceedings that impact the mining industry. These roundtables are mutually beneficial to the mining industry, and the Office of Advocacy. They have helped our understanding of SBREFA and the role of the Office of Advocacy, and have provided

Jere Glover

Page 2

an opportunity for our industry to keep the Office of Advocacy informed on various agency rulemakings and how they adversely impact small businesses in the mining industry. As a result of these roundtables, the Office of Advocacy has filed extensive comments on two separate occasions in the BLM's proposed rulemaking involving the 43 CFR 3809 Surface Management Regulations and important comments on the BLM's proposed location, millsite and mining claim rule.

Congress passed SBREFA to correct the problem of government agencies routinely ignoring small businesses and the RFA. Clearly, SBREFA provided much needed "teeth" to the RFA by creating the Office of Advocacy and allowing for judicial review of selected portions of the RFA. This is a powerful tool for the small business community and has empowered small business with the opportunity to fight oppressive regulations effectively. The Office of Advocacy plays an important role in the success of SBREFA.

We appreciate the working relationship we have developed with your office, and look forward to continuing to work with you to protect the rights of small businesses in the mining industry.

Sincerely,



Laura Skaer  
Executive Director

LS/kw

Jun-19-00 11:28am From-PATTON BOGGS LLP

20245763154440

T-195 P.02/03 F-435

**PATTON BOGGS LLP**  
ATTORNEYS AT LAW

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6315  
www.pattonboggs.com

June 19, 2000

Adele L. Abrams, Esq.  
202-457-6476  
aabrums@pattonboggs.com

VIA FACSIMILE

Mr. Jere Glover  
Chief, Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

Re: Office of Advocacy Assistance

Dear Mr. Glover:

On behalf of my mining clients, I want to thank you and your staff at the Small Business Administration's Office of Advocacy for your valuable assistance concerning rulemaking activities by the Mine Safety and Health Administration (MSHA). As you are well aware, the mining industry is made up almost entirely of small business entities, as more than 90 percent of U.S. mines have fewer than 500 employees. In recent years, MSHA has embarked on a very ambitious rulemaking agenda and has several standards at the final rule stage with a significant economic impact on this sector of the business community. Therefore, the involvement and input of the SBA is particularly important in helping small mining operations communicate with MSHA to avoid burdens that could put some mines out of business entirely.

You and your staff have provided direct and important contact with MSHA concerning its improper Regulatory Impact Analysis of the forthcoming Noise Standard (e.g., MSHA's failure to use the codified specification for what constitute a small business entity in the mining industry), and this resulted in having MSHA revise its report to present more realistic cost impact estimates.

We also appreciate your help in holding periodic stakeholder meetings with mining industry representatives on other MSHA rulemaking issues such as diesel particulate, silica and miner training. Even in the absence of SBREFA panels for these rules (a situation which we hope will be remedied by passage of S. 1114, Senator Enzi's SBREFA amendments legislation), it is reassuring to know that the regulatory concerns of small businesses will not be ignored because the SBA's Office of Advocacy offers an open door and an open mind when it comes to critical mining issues.



Jun-18-00 11:26am From-PATTON BOGGS LLP

20245763154440

T-195 P.03/03 F-435

**PATTON BOGGS LLP**  
ATTORNEYS AT LAW

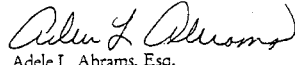
Mr. Jere Glover  
June 19, 2000  
Page 2

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6315  
[www.pattonboggs.com](http://www.pattonboggs.com)

Again, thank you for your assistance. We look forward to a continuing beneficial relationship with you and your staff.

Sincerely,

  
Adele L. Abrams, Esq.

JUN. 19. 2000 9:43AM MCGUINNESS HOLCH

NO. 867 P. 2/2

**Stephen F. Sims & Associates**  
400 North Capitol Street, N.W. Suite 585  
Washington, D.C. 20001

phone 202-783-5300  
fax 202-393-5218  
June 19, 2000

Mr. Jere W. Glover, esq.  
Chief Counsel for Advocacy  
U.S. Small Business Administration  
Washington, D.C. 20416

Dear Mr. Glover:

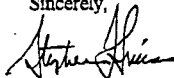
I am writing on behalf of my client, the Pharmaceutical Distributors Association, to thank your office for its timely and effective intervention on behalf of small businesses in a rulemaking by the Food and Drug Administration relative to the Prescription Drug Marketing Act. In December, 1999 the FDA issued a Final Rule completing the implementation of this 1988 statute. The effective date of the Rule was December 4, 2000.

By the FDA's own calculation, some 4,000 pharmaceutical distributors who are small businesses are covered by the rule. The FDA's regulatory impact analysis, which was seriously flawed, concluded that the rule would have no impact on these companies. In fact, the rule would drive most of them out of business, threatening the supply of pharmaceuticals to end users and placing upward pressures on drug prices.

You and Shawn Carter McGibbon, the Assistant Chief Counsel for Advocacy, drafted a letter to the FDA Commissioner on February 29, 2000 asking that agency to reconsider its Final Rule, suspend the effective date and reissue regulations more in keeping with the intent of the Congress. This letter, and the detailed analysis therein, played a major role in convincing the FDA to reopen the Final Rule for further comments and extend its effective date to October 1, 2001.

The Office of Advocacy's intervention in this matter is a valuable case study in the need for small businesses to have a Federally established oversight organization to whom they can appeal in cases where agency impact analyses are seriously flawed. Thank you again for the very timely and effective work of your office in this important economic and policy matter.

Sincerely,



Stephen F. Sims  
Pharmaceutical Distributors Association

cc: Mr. Sal Ricciardi, PDA

**Porcelain Enamel Institute, Inc.**  
**4004 Hillsboro Pike, Suite 224B**  
**Nashville, TN 37215**

Please Reply to:  
**JOHN C. OLIVER**  
 Washington Office  
 5501 Seminary Road, Suite 2104  
 Falls Church, VA 22041  
 (703) 998-6222 - Fax (703) 998-6224

Jere Glover  
 Small Business Administration  
 Washington, DC

RE: SBA's Office of Advocacy

Dear Mr. Glover:

We want you to know that our association and its 100 member companies, most of which are small business firms, are indebted to the Office of Advocacy for the truly outstanding services that it provides to the small business sector. The knowledgeable and energetic efforts of the Office's very small team continue to aid and benefit us in countless ways. I am personally a little amazed they accomplish all that they do, with their limited staff dealing with a very full agenda, indeed.

Our association, and most of our member companies, have rather small staffs who must handle Washington-generated affairs. Those people involved with government matters handle them part time, along with their other main production-related duties. Only in rare instances are we able to give full time attention to any of the bevy of Federal government rules and regulations that may impact us directly or indirectly.

Here the Office of Advocacy helps us immeasurably (and often!) - alerting us and keeping us posted on developing issues and helping us establish our priorities. Then, making use of its long-established close working relationship with the full association community, they make each of us aware of other groups with common interests in specific issues. Oftentimes, from this broad multi-group base, and with Office's associates providing expertise and guidance, some remarkable accomplishments are realized - such as, more reasonable and attainable regulatory levels, rules targeting smaller industrial populations rather than "everybody", sound technically based regulations and rules where cost/benefits have really been considered.

The work of the Office of Advocacy has been outstanding and really beneficial to the Porcelain Enamel Institute and a whole host of other associations with a sizable small business membership. An example of a long-time and most worthwhile effort was that dealing with *Stormwater* - one of those subjects that impacts just about everybody and one that has been on-going and time-consuming for most of the 1990s. On this one project alone, Kevin Bromberg and his troops earned our unending gratitude. In our opinion, the Office did yeoman service here and was the most important force in bringing a substance of reason and "real world-ness" into this massive, complicated rule.

-2-

Now, currently, the Office is an invaluable force in the on-going efforts involving EPA's Metal Products & Machinery Effluent Guidelines. As in many other previous projects, the Office is operating in its unique manner of nudging the Agency, keeping the industry sector informed and being a key factor in just about every part of the on-going activity. A MP&M proposal is scheduled for October, 2000-- and our industry, as well as the many other metals-related industries to be impacted, will be far better prepared to do meaningful comments as a result of the major role of the Office of Advocacy. We are close to being optimistic that a reasonable and workable rule will emerge.

In summary, we view SBA's Office of Advocacy to be the best bargain we can identify from our tax dollar. The group understands the small business sector -- and they really care ! They understand the regulatory process -- and their efforts make a real difference in helping achieve rules that make some sort of sense. Certainly, they are an understaffed group and, I am quite sure, underpaid ! We totally support the proposal of a larger budget. Then, with increased funding, we support an expanded role of activity as the Office seeks to serve the needs and interests of those of us with a small business contingency that have to deal with government regulations.

Sincerely,



John C. Oliver  
Manager, Washington Office  
Porcelain Enamel Institute, Inc.

**PostalWatch Incorporated**  
3631 Virginia Beach Blvd., # 100  
Virginia Beach, VA 23452  
(877) 576-7825

Mr. Jere W. Glover, Chief Counsel  
Office of Advocacy, Small Business Administration  
409 3<sup>rd</sup> Street SW, Suite 7800  
Washington, DC 20416

Friday, June 16, 2000

Dear Mr. Glover

PostalWatch is a non-partisan, not-for-profit organization interested in protecting individual American citizens and private sector businesses from negative actions on the part of the US Postal Service. Our membership is consists of predominately small businesses and sole proprietorships.

PostalWatch has work closely with your office for the last fourteen months in an attempt to prevent the Postal Service from executing their regulations which negatively impact the approximately one million small businesses that rent private mailboxes from the nations 10,600 Commercial Mail Receiving Agencies (CMRAs).

The Postal Service enjoys immunity from virtually every federal statues intended to protect small business and individuals from onerous and capricious actions on the part of federal agencies including, the Administrative Procedures Act and the Regulatory Flexibility Act. This exemption has not, however deterred the Office of Advocacy, which today after 14 months, remains intensely engaged on this issue.

The Office of Advocacy and Jennifer Smith continues to provide invaluable assistance in this long and difficult process. The level of expertise and commitment demonstrated by your staff is truly commendable and exemplifies "Public Service". Your staff has not missed a single beat over these last 14 months. Advocacy has attended every meeting and returned every phone. Your office has provided thoughtful and thoroughly researched comment letters for every significant rule-making initiative, no small undertaking given Postal Service's propensity for rule-making on this issue.

The Office of Advocacy's unique ability as part of the Administration to work with congressional staff and outside organizations has proved highly effective.

In conclusion, as a small businessperson of over twenty years myself, I can say without hesitation that although loan programs and studies are helpful, what the small business community really needs is more Advocacy! The future of small businesses in America is not threatened from a lack of capital or information it is threatened by the unintended consequences of government actions.

Thanks to you and your staff for all your efforts on our behalf and for your continued commitment to the small business community.

Sincerely yours,



Rick Merritt  
Executive Director

Jun. 20. 2000 10:12AM S U T I 714 9552721 FAX 9552739

No. 5018 P. 1

**Select University Technologies, Inc.**2151 Airway Avenue, Ste. E-240 Costa Mesa, CA 92626 (949) 955-2721 or 1-800-360-SUTI FAX (949) 955-2739

June 20, 2000

Jere W. Glover  
Chief Counsel  
Small Business Administration  
409 - 3<sup>rd</sup> Street SW  
Washington, D.C. 20416

Dear Jere:

This letter is to express Select University Technologies Inc.'s appreciation for the support you gave in helping us effect changes within the SBIC program that allowed incubators such as ours to more adequately participate in the program.

I particularly want to thank Terry Bibbens, whose understanding of the SUTI structure and approach, and whose encouragement during the process, was invaluable. It is nice to know that there are people in Washington who can positively convey issues that matter.

Once again, thank you for your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Frederick T. Rogers".

Frederick T. Rogers  
President



June 20, 2000

The Honorable Jim Talent  
Chairman, House Committee on Small Business  
2361 Rayburn House Office Building  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Talent:

On behalf of the member associations of the Small Business Legislative Council (SBLC), I want to express our unwavering support for the SBA Office of Advocacy and the important role it has played in defending and helping small businesses. For nearly two decades the Office of Advocacy has been at the forefront of the important policy debates involving small business interests. In those debates the Office of Advocacy has served as an independent voice of reason in an otherwise hostile environment for small business. As a result, SBLC would not support legislative efforts to strip or alter the Office of Advocacy's current authority to be a strong advocate for small businesses.

The enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 expanded the responsibilities of the Office of Advocacy under the Regulatory Flexibility Act. Specifically, SBREFA requires the Office of Advocacy to participate in a panel review of new regulations under consideration by either the Occupational Safety and Health Administration (OSHA) or the Environmental Protection Agency (EPA). While in the past, regulatory agencies such as OSHA and EPA routinely dismissed their small business obligations under the RFA, the SBREFA panel process, through the Office of Advocacy, now provides small business with a voice early on in the rulemaking process.

Consider the effect SBREFA and the Office of Advocacy have had on OSHA's proposed ergonomics standard. As a result of the Office of Advocacy's economic research, OSHA was required to adjust the cost impact of the proposed ergonomics rule as well as concede other significant changes. While the proposed ergonomics regulation remains far from perfect, without the Office of Advocacy's participation in the debate, the small business community would be staring at an even more onerous proposal.

The Honorable Jim Talent  
June 20, 2000  
Page Two

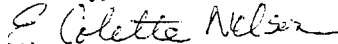
The Office of Advocacy has also been in the trenches fighting for the interest of small business when it comes to procurement reform. On issues such as contract bundling, unfair government competition, contractor blacklisting, Federal Prison Industries and electronic commerce, the Office of Advocacy has been there to make sure the concerns of small business are heard.

Moreover, the Office of Advocacy has been at the vanguard of small business tax issues. In the current Congress alone, the Office of Advocacy has played a role in shaping the debates over the estate tax, retirement savings plan reform, cash vs. accrual accounting, installment sales, and independent contractor legislation.

So whether it is OSHA's current attempts to regulate repetitive stress injuries, regressive government procurement practices, or ensuring tax fairness, the Office of Advocacy has been there for small business. Maintaining a strong, independent Office of Advocacy will continue to be a priority for SBLC.

The SBLC is a permanent, independent coalition of nearly 80 trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For your review, a list of our members is enclosed.

Sincerely,



E. Colette Nelson  
Chairwoman

Enclosure

/S4245





### Members of the Small Business Legislative Council

|  |  |
|--|--|
| <p>           SBCIL<br/>           Air Conditioning Contractors of America<br/>           Alliance of Independent Store Owners and Professionals<br/>           American Association of Equine Practitioners<br/>           American Bus Association<br/>           American Consulting Engineers Council<br/>           American Machine Tool Distributors Association<br/>           American Moving and Storage Association<br/>           American Nursery and Landscape Association<br/>           American Road &amp; Transportation Builders Association<br/>           American Society of Interior Designers<br/>           American Society of Travel Agents, Inc.<br/>           American Subcontractors Association<br/>           Associated Landscape Contractors of America<br/>           Association of Small Business Development Centers<br/>           Association of Sales and Marketing Companies<br/>           Automotive Recyclers Association<br/>           Bowling Proprietors Association of America<br/>           Building Service Contractors Association International<br/>           Business Advertising Council<br/>           CBA<br/>           Council of Fleet Specialists<br/>           Council of Growing Companies<br/>           Cremation Association of North America<br/>           Direct Selling Association<br/>           Electronics Representatives Association<br/>           Florists' Transworld Delivery Association<br/>           Health Industry Representatives Association<br/>           Helicopter Association International<br/>           Independent Bankers Association of America<br/>           Independent Medical Distributors Association<br/>           International Association of Refrigerated Warehouses<br/>           International Franchise Association<br/>           Machinery Dealers National Association<br/>           Mail Advertising Service Association<br/>           Manufacturers Agents for the Food Service Industry<br/>           Manufacturers Agents National Association         </p> | <p>           Manufacturers Representatives of America, Inc.<br/>           National Association for the Self-Employed<br/>           National Association of Plumbing-Heating-Cooling Contractors<br/>           National Association of Realtors<br/>           National Association of RV Parks and Campgrounds<br/>           National Association of Small Business Investment Companies<br/>           National Association of the Remodeling Industry<br/>           National Community Pharmacists Association<br/>           National Electrical Contractors Association<br/>           National Electrical Manufacturers Representatives Association<br/>           National Lumber &amp; Building Material Dealers Association<br/>           National Ornamental &amp; Miscellaneous Metals Association<br/>           National Paperbox Association<br/>           National Retail Hardware Association<br/>           National Society of Accountants<br/>           National Tooling and Machining Association<br/>           National Wood Flooring Association<br/>           Organization for the Promotion and Advancement of Small Telephone Companies<br/>           Painting and Decorating Contractors of America<br/>           Petroleum Marketers Association of America<br/>           Printing Industries of America, Inc.<br/>           Professional Lawn Care Association of America<br/>           Promotional Products Association International<br/>           The Retailer's Bakery Association<br/>           Saturation Mailers Coalition<br/>           Small Business Council of America, Inc.<br/>           Small Business Exporters Association<br/>           SMC Business Councils<br/>           Society of American Florists<br/>           Tire Association of North America<br/>           Turfgrass Producers International<br/>           United Motorcoach Association<br/>           Washington Area New Automobile Dealers Association         </p> |
|--|--|

JUN-19-2000 15:01

SOC. OF AMERICAN FLORISTS

703 836 8705 P.02/03



June 19, 2000

The Honorable Jere Glover  
 Chief Counsel  
 Office of Advocacy  
 U.S. House Small Business Administration  
 Washington, DC 20416

Dear Mr. Glover:

I am writing to express my strong support for the Office of Advocacy and specifically for your leadership as Chief Counsel. We commend you for your commitment to helping small business succeed.

SAF is pleased to have worked closely with you and your team of professional staff on a variety of issues. SAF especially applauds your efforts to raise the concerns of small businesses to federal agencies using the Small Business Regulatory Enforcement Fairness Act (SBREFA). SAF believes your leadership on several regulatory initiatives such as OSHA's rulemaking on safety and health programs and ergonomics have been instrumental in agency compliance with the Regulatory Flexibility Act (RFA).

Under your leadership, the Office of Advocacy has evolved into a formidable force in representing small business in agency rulemakings. In accordance with SBREFA, you convened a panel including of small businesses to analyze the impact of OSHA's draft safety and health proposal. The panel found that OSHA grossly underestimated the costs of compliance to small entities. The panel's report contained recommendations for important modifications to the proposal to protect small business.

A year ago, you spoke at SAF's legislative conference and were instrumental in demonstrating the importance of the SBREFA process to our membership. You and your staff have continuously met the needs of our membership and proved to be a valuable resource to our association staff.

SAF believes your personal dedication, knowledge, and experience as a watchdog of small business has been critical to educating federal agencies on the special challenges facing small entities and facilitating an open dialogue between all the stakeholders.

Chairman of the Board  
 Gary C. Gilling, AAF  
 Gilling & Gilling Orchids, Inc.  
 Santa Barbara, California

President  
 John E. Smith, Jr., AAF  
 Good Mitten Company, Inc.  
 Evergreen, Arkansas

President-Elect  
 Chuck Gossner, AAF  
 Gossner & Pizzuto  
 Billings, Montana

Treasurer  
 Karen Gamba  
 Air Control Company  
 Atlanta, Georgia

Exec. Vice President  
 & CEO  
 Peter J. Moran

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 Denver, Colorado

Dave Means  
 Means Floral Products, Inc.  
 Springfield, Missouri

Dr. Terrell A. Nell, AAF  
 University of Florida  
 Gainesville, Florida

Lee Rostrom  
 Washington Park Co., Inc.  
 Alt., Vermont, Washington

Stephen F. (Sam) Viviano, AAF  
 Bartz Wholesale Florists & Gifts  
 Toledo, Ohio

1601 DUKE STREET  
 ALEXANDRIA, VA 22314  
 USA  
 703.836.8700 voice  
 703.836.8705 fax  
 www.saf.org/usa/0202

JUN-19-2000 16:01

SOC. OF AMERICAN FLORISTS

703 836 8705 P.03/03

SAF represents the entire floriculture industry, made up of nearly 70,000 small business including growers, wholesalers, retailers, suppliers and manufacturers across the United States. The US floral industry is both labor and capital intensive. The cumulative burden of regulation is threatening the industry's competitiveness and viability.

SAF believes you have created the strongest Office of Advocacy ever. Advocacy's role is critical to giving SAF and its members a voice in the regulatory process. You have a record of success that we deeply appreciate.

Sincerely,



Dave Lisowski  
Chairman Government Relations Committee



Jeanne Little  
Director, Government Relations



06/17/2000 09:58 18502223663

ASSOC OFFIC

PAGE 01

**SOUTHEASTERN FISHERIES ASSOCIATION, INC.**

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • NORTH CAROLINA • SOUTH CAROLINA



ROBERT P. JONES, Executive Director  
 Phone (850) 224-0512  
 Fax (850) 222-3663  
 E MAIL: [BobJones@sfaa.com](mailto:BobJones@sfaa.com)

June 17, 2000

Mount Vernon Square  
 1116-B Thomasville Road  
 Tallahassee, Florida 32303-6267  
 WEBSITE: [www.southeasternfish.org](http://www.southeasternfish.org)

Jere Glover, Esquire  
 Chief Counsel  
 Office of Advocacy  
 Small Business Administration  
 409 Third Street, SW  
 Mail Stop 3113  
 Washington, D.C. 20416

Good Morning Mr. Glover:

On behalf of the 400 companies comprising Southeastern Fisheries Association, we thank you for all the professional assistance you have given the seafood industry over the past few years.

Your very innovative Roundtable Discussions, that brought many groups affected by federal regulations to the same table for informative exchanges and a better understanding of the issues, was very important and should be expanded.

Your goal of assisting small businesses, the backbone of our economy, has been spelled out by Congress and we feel it is time for congress to more fully fund your office so you can serve the people even better.

Thanks again for your help. You can truly say, "I am from the government and I am here to help you."

Sincerely yours,

Bob Jones  
 Executive Director

Serving the Southeastern Seafood Industry proudly since 1962

Jun-20-00 07:23am From:SOCMA

+2022968548

T-663 P.02/03 F-840



**SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION, INC.**  
 1850 M Street, N.W., Suite 700, Washington, D.C. 20036  
 (202) 721-4100 • Fax: (202) 296-8120

June 20, 2000

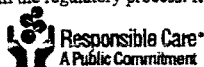
Mr. Jere W. Glover  
 Chief Counsel for Advocacy  
 U.S. Small Business Administration  
 Office of Advocacy  
 409 Third St., S.W.  
 Washington, DC 20416

Dear Mr. Glover:

On behalf of the Synthetic Organic Chemical Manufacturers Association (SOCMA), I am writing to express our appreciation for the important role that you and the U.S. Small Business Administration's (SBA) Office of Advocacy play in today's federal regulatory system. As you are aware, SOCMA is a trade association representing batch and custom chemical manufacturers, a highly innovative, entrepreneurial and customer-driven sector of the chemical industry. More than 2,000 batch processing facilities produce 50,000 of the specialty and custom chemicals manufactured in the U.S. at a value about \$60 billion annually. SOCMA members are representative of these facilities, which are typically small businesses with fewer than 75 employees and less than \$100 million in annual sales.

Like most of the companies we represent, SOCMA staff resources are limited. The information and opportunities provided by your office are valuable assets to SOCMA. One of the most important activities conducted by the Office of Advocacy is the monthly environmental roundtable meeting. These meetings provide SOCMA and others with a strategic opportunity to keep apprised of the latest issues, trends, proposals and reinvention programs underway at the U.S. Environmental Protection Agency (EPA) and other federal agencies. Not only are pertinent issues addressed in full detail, the roundtable provides an opportunity to discuss points of agreement and concern with agency representatives responsible for development and implementation of the issues at hand. In addition to program specific dialogue, the roundtable meetings also provide a direct point of contact with numerous other government representatives. For example, EPA's Small Business Ombudsman, and congressional House and Senate Small Business Committee staff are often in attendance. The opportunity to speak with such a variety of people in one forum saves valuable SOCMA time and resources.

Also of great importance to SOCMA and the small business community is the role of the Office of Advocacy in the regulatory process. It brings us great comfort to



Jun-20-00 07:24am From-SOCMA

+2022866548

T-663 P.03/03 F-640

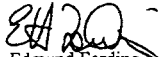
know that the views and positions of small business are represented at times when public participation is precluded. For example, the work of the Office of Advocacy before EPA proposed its amendments to the Inventory Update Rule (IUR) under the Toxic Substances Control Act (TSCA) influenced the EPA to amend portions of the proposal beneficial to SOCMA members before it was published.

Most recently, the Office of Advocacy provided support and leadership in an EPA enforcement initiative concerning reporting errors under the Toxics Release Inventory. Since the "violations" at issue are technical reporting errors that pose no environmental threat, a coalition of small business trade associations successfully negotiated compromised terms that saved some companies up to \$15,000 while correcting the paperwork errors. Such a balanced agreement is due in large part to the involvement of the SBA.

The Office of Advocacy is also instrumental in keeping SOCMA and others in the small business community involved with the latest developments regarding the implementation of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

SOCMA appreciates the lasting commitment of the Office of Advocacy to represent and preserve the competitiveness of U.S. small business. If we can be of service to you, please do not hesitate to call me at (202) 721-4197.

Sincerely,

  
Edmund Fording  
President

06/19/00 MON 15:05 FAX 703 838 2950

UNITED MOTORCOACH ASSN.

002

June 19, 2000

Mr. Jere W. Glover  
 Chief Counsel for Advocacy  
 Small Business Administration  
 409 Third Street, SW  
 Washington, DC 20416

Dear Mr. ~~Glover~~ <sup>Green</sup>,

On behalf of the members of the United Motorcoach Association (UMA), I wish to once again express our thanks for the work conducted by the SBA's Office of Advocacy in support of the Nation's motorcoach industry. As you are aware, UMA is the Nation's largest association of professional motorcoach owners and operators. We represent over 900 of the Nation's largest and smallest private commercial passenger carriers as well as some 150 motor coach manufacturers, component and service suppliers. UMA operator members provide tour and charter, regular route, commuter, airport shuttle, and school transportation services in both interstate and intrastate commerce.

It has been estimated that over 95 percent of the Nation's motorcoach companies meet the SBA definition of a small business. Over the past several years UMA has come to rely on the Office of Advocacy as its first line of defense against executive branch agencies that do not adequately consider the effect of significant rulemakings on industries such as ours. Once again you and your staff have come through for us. We recognize that during the recent DOT hours-of-service rulemaking, the Office of Advocacy played the leading role in persuading the agency to reverse their negative small business effect certification. By this action the entire nature of the rulemaking was changed to the benefit of small coach operators.

It goes without saying that in matters concerning the EPA and OSHA the Office of Advocacy has also been highly effective. Your office recently provided the UMA with an opportunity to voice our concerns regarding the recent EPA diesel engine emission reduction standards and OSHA's ergonomic and health and safety rulemakings at your regularly scheduled roundtable sessions. Because key congressional and agency staff personnel also attend we are able to inform the individuals that most need to know our concerns. This occurred before we got into the formal commenting process.



113 South West Street, 4th Floor  
 Alexandria, VA 22314-2824  
 Phone: 703-838-2020 Toll-Free: 1-800-424-8262  
 FAX: 703-838-2950  
<http://www.uma.org>

06/19/00 MON 15:05 FAX 703 838 2950

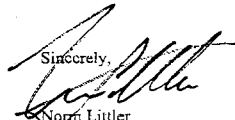
UNITED MOTORCOACH ASSN.

003

Our industry will never forget the assistance we received in 1998 when the Department of Transportation proposed ADA rules that would have set quotas for the installation of wheelchair lifts in the charter and tour coach segment of the industry. Your department's assistance in convincing Secretary Slater to allow a service based option, instead of the quota based approach that was first proposed, saved an estimated \$200 + million. This was money that thousands of small, marginally profitable coach operators would have otherwise had to pay. Many would have gone under trying.

In closing, I have attached a copy of the text that accompanied UMA's Appreciation Award that you accepted on behalf of yourself and your outstanding staff at our 1999 Motorcoach EXPO in Houston. Gere, UMA values what the Office of Advocacy does for us. I know for a fact that this is an opinion held by all of the other small business representatives that I come into contact with.

Sincerely,



Norm Littler  
Vice President of Government Affairs



**Presentation of a Plaque of Appreciation to the Jere Glover and the Staff of the SBA  
Office of Advocacy by Calvin Cooper, UMA President at the 1999 UMA  
Motorcoach EXPO in Houston, Texas**

In March of 1998 the Department of Transportation published its long anticipated proposed rule for motorcoach accessibility for persons with disabilities. The goal of achieving accessibility for all people in all forms of transportation laudable and one that the motorcoach industry fully endorses. DOT's proposed rule however would have gone far beyond what would have been necessary to serve the Nation's disabled traveler.

It was at this point that the United Motorcoach Association turned to the U.S. Small Business Administration's Office of Advocacy for help. The Office of Advocacy acts as the watchdog agency for small business interest over regulatory actions by other federal agencies. Federal law requires regulators to consider the effect of their rules on small businesses and develop rules that have the least cost and burden attached.

In April, the Office of Advocacy convened a meeting between DOT and a group of small motorcoach company owners to examine the expected effect of the ADA rule on their operations. During the meeting it was suggested that the least costly means of providing full accessibility would be by adopting a service-based rule. Both the SBA and DOT were assured that the needs of disabled passengers could effectively be provided in this fashion. Industry representatives convinced the Office of Advocacy of the merits of the service-based approach to such an extent that the agency filed with DOT on behalf of the industry's position.

UMA believes that the Office of Advocacy's comments were directly responsible for DOT's introduction of a service-based approach to accessibility for the majority of coach operators. Their advocacy on behalf of small company owners may reduce the overall cost of the ADA rule to the industry by as much as \$200 million.

Because of this UMA has had a plaque prepared. The dedication reads . . . "This award is presented to the Small Business Administration, Office of Advocacy, in grateful appreciation for its courageous and effective representation of the best interests and business practices of the members of the United Motorcoach Association during 1998."

At this time I will ask Mr. Jere Glover to join me. Mr. Glover is chief council for advocacy at the Small Business Administration.

- He was nominated to this position by President Clinton and was confirmed by the Senate in 1994.
- He is attorney specializing in small business issues and prior to joining SBA was a trade association executive and CEO of several successful businesses.

- From 1978 to 1981, Mr. Glover served as the SBA's deputy chief for advocacy and played an active role in the White House Conference on Small Business.
- In 1978, he served as subcommittee counsel to the House Small Business Committee.
- From 1975 to 1977, he served as director of the legal division of the Consumer Product Safety commission and was also an anti-trust attorney with the Federal Trade Commission.
- Mr. Glover holds a bachelor's degree and a law degree from Memphis State University. He also holds an advanced law degree in administrative law and economics from George Washington University.

And now Jere, it gives me great pleasure to ask you to accept, on behalf of the all the members of the Office of Advocacy, this award of appreciation from the members of the United Motorcoach Association.

JUN-20-00 16:12 FROM:FALEY KOITHMAN ET.AL.

ID:301+884+7354

PAGE 3/5

## Small Business Council of America

### PRESIDENT'S OFFICE

Al Martin, 9401 Indian Creek Parkway, 6th Floor  
Overland Park, KS 66210-2007 (913) 451-6060 FAX (913) 451-8879

June 20, 2000

Jere W. Glover, Esquire  
Chief Counsel of Advocacy  
Office of Advocacy  
Small Business Administration  
409 3rd Street, S. W., Seventh Floor  
Washington, D. C. 20416

Dear Jere:

We are aware that the Small Business Committee is holding hearings on Wednesday of this week to solicit ideas on ways to improve the Office of Advocacy at the U.S. Small Business Administration. Because we have worked closely with the Office of Advocacy and, in particular, the Chief Counsel of that Office, for the last 14 years, the Small Business Council of America would like to take this opportunity to express our views. The SBCA is a national nonprofit organization which represents the interests of privately-held and family-owned businesses on federal tax, health care and employee benefit matters. The SBCA, through its members, represents well over 20,000 enterprises in retail, manufacturing and service industries, virtually all of which sponsor retirement plans or advise small businesses which sponsor private retirement plans. These enterprises represent or sponsor well over two hundred thousand qualified retirement plans and welfare plans, and employ over 1,500,000 employees.

We have found that the Office of Advocacy has developed during these last 14 years into an extremely effective facilitator and catalyst with key officials at the Treasury and the Internal Revenue Service on behalf of small businesses. Prior to Jere Glover becoming Chief Counsel, relationships between the IRS and the Treasury on one side and small business on the other were marked with distrust and often, on the government's side, a lack of knowledge of how a small business operated.

Particularly in the retirement plan area, in large part due to the efforts of Jere Glover and his excellent staff, Russ Orban and Ken Simonson, there have been a series of meetings with key members of Treasury and representatives of the small business associations to make it easier for small businesses to sponsor retirement plans.

PAULA CALIMAFDE, CHAIR  
4800 Hampden Lane, 7th Floor Bethesda, MD 20814-2922 (301) 951-9325 FAX (301) 654-7354



Jere W. Glover, Esquire  
June 20, 2000  
Page Two

Prior to the 1995 White House Conference on Small Business, the Office of Advocacy, chaired by the Chief Counsel, brought together a number of the key small business associations in an effort to find out what changes small business thought should be made in the retirement plan area. The Office of Advocacy developed several excellent pieces for use by the delegates to the White House Conference on Small Business from this forum. Basically, the concept was to entice small businesses into the voluntary retirement plan system, the system had to become more user-friendly and more cost effective for the owners. Thus, a number of suggestions were developed that would reduce complexity in this area, reduce costs and increase incentives for small business owners to adopt retirement plans. These suggestions were literally endorsed by every major small business group at the White House Conference on Small Business.

Following the conference, Jere Glover convened a meeting which included Treasury officials and representatives from the small business associations involved in this issue. At this meeting, the specific suggestions adopted by the White House delegates in this area were reviewed and agreed to in concept by all attending. The smooth passage of the last several retirement laws through Congress and the White House is due, at least in part, to the efforts of these small business groups working with the Office of Advocacy. Of course, the efforts of the many Congressmen involved in the development of these bills cannot be ignored nor understated. It is no exaggeration to say that the new SIMPLE plan evolved from the 1995 White House Conference on Small Business.

This close relationship continued throughout the last several years. The efforts of the Chief Counsel and his staff, combined with a number of key small business associations and the Treasury and IRS resulted in the recent IRS Revenue Ruling which made a number of changes in the regulation of the 401(k) Safe Harbors, making them far more effective for small business. Again, the role of the Office of Advocacy, and the Chief Counsel in particular, as a catalyst and facilitator was greatly appreciated by the small business community. In fact, one expert in the retirement plan area stated the other day, that the entire retirement plan community and small business community owe the Office of Advocacy a debt of gratitude for bringing the plight of small business retirement plans to the attention of Treasury and IRS and helping to resolve many critical issues for small businesses in this area.

Jere Glover is presently serving in this same role with high level meetings occurring with key members of IRS and Treasury on the technically complex "new comparability" issue. The Chief Counsel has enunciated the position of small business in this area very ably and continues to be an outstanding advocate for small business.


It makes us pause when asked how to improve the Office of Advocacy when in our opinion, it is operating at such a high level. But since the SBCA is active in the tax and employee benefits area, we are well aware that by law the Office of Advocacy has the right to make comments on

Jere W. Glover, Esquire  
June 20, 2000  
Page Three

proposed regulations issued by IRS that impact small business. We are of the belief that simply because the Office of Advocacy holds this power, both IRS and Treasury are more eager to discuss issues with the Office of Advocacy. To fully exercise this power would undoubtedly require more resources than is currently available to the Office of Advocacy, but based on the extraordinarily high level of performance achieved on the current budget to date, it would be money very well spent.

In our opinion, the Office of Advocacy should receive increased funding to be able to fully carry out the powers given to it under the law. At the same time, it must be recognized that the Office of Advocacy has performed its functions, at least in the tax and retirement plan area, in an outstanding manner.

Sincerely yours,



Paula A. Calimafde, Chair

PAC:bdh

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 \*NOT ADMITTED IN D.C.

DIRECT DIAL (202) 737-4289

June 20, 2000

Jere W. Glover  
 Chief Counsel for Advocacy  
 Small Business Administration  
 409 3<sup>rd</sup> St. S.W.  
 Washington D.C. 20416

Dear Mr. Glover:

I am writing as counsel to the Ephedra Committee of the American Herbal Products Association, and as a partner in a law firm that specializes in Food and Drug regulatory matters, to thank the Office of Advocacy, and specifically Ms. Shawne C. McGibbon and Ms. Mary K. Ryan, for providing essential and timely help to small businesses that sell dietary supplements. Without the help of the Small Business Administration (SBA), the earnings of hundreds of thousands of direct sales distributors of supplement products and other small businesses would have been substantially reduced by irrational government regulation. Further, the actions of the SBA have, in the view of knowledgeable experts in the weight loss area, resulted in an enormous public health benefit to consumers.

In 1997, the Food and Drug Administration (FDA) published a proposed regulation that would have essentially eliminated dietary supplements containing ephedra from the market. The products are safely used as effective weight loss aids and for energy by millions of Americans. The SBA Office of Advocacy submitted to FDA extensive and highly critical comments on this proposal. The SBA comments supported the comments of small businesses and other representatives of industry and helped to establish not only that FDA had failed to accurately assess the economic impact of the proposal on small businesses, but also that the proposed regulation appeared on its face to have no valid scientific basis.

Jere W. Glover  
June 20, 2000  
Page 2

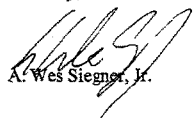
HYMAN, PHELPS & MCNAMARA, P.C.

As a direct result of SBA's comments, Congress took a strong interest in FDA's proposal and requested the General Accounting Office (GAO) to audit the proposed regulation. In 1999, the GAO published a highly critical report and recommended that FDA not proceed with the rulemaking as proposed because of the lack of any rational scientific basis for the proposed rule.

FDA withdrew the most controversial portions of the proposed regulation on April 3, 2000. This is an astounding and unprecedented turnaround that would not have occurred without the SBA's help. Last year, according to a recent Arthur Anderson survey, well over three billion servings of ephedra supplements were sold, benefiting consumers and providing needed income to hundreds of thousands of small businesses. New research that has been conducted since 1997, some of which will be published this year, further establishes that industry's, consumers' and the SBA's skepticism about FDA's proposal was well-founded — ephedra products, when responsibly marketed and consumed, are safe and useful as weight loss aids, and are one of a very few but very important tools in the fight against excess weight in America.

As a result of the support the Office of Advocacy has provided, I am now convinced the SBA is an essential watchdog to prevent ill-conceived FDA regulation. I am confident that Congress will recognize the need for a strong SBA to help small businesses protect themselves from unnecessary and damaging regulations.

Sincerely,



A. Wes Siegner, Jr.

AWS/eal



## Small Business Technology Coalition

*Supporting Technology Innovation and Entrepreneurship*

June 20, 2000

Jere Glover, Esquire  
Chief Counsel  
Office of Advocacy  
Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

Dear Mr. Glover:

In view of a forthcoming Congressional oversight hearing on the Office of Advocacy, I want to take this opportunity to congratulate your office for its outstanding work on behalf of small business during your tenure as Chief Counsel.

On behalf of the members of the Small Business Technology Coalition, I want to particularly thank you for your efforts in helping to secure Congressional reauthorization of the SBIR program. More than 5000 technology based small business concerns are the annual recipients of more than \$1.1 billion in Phase I and II SBIR awards. Millions more are awarded annually as Phase III follow-on contracts. Collectively these awards have and are making a demonstrable, profound difference to the Nation's competitiveness and level of productivity, not to mention the economic well being of participating SBIR companies. You and your Office of Advocacy colleagues have been instrumental in helping Congress understand the continued importance of this program and in helping redesign the program so it will be even more effective and productive in the years to come. You have also played a major role in making certain that the SBIR participating agencies adhere to the spirit as well as the letter of the law when administering their respective SBIR programs, a function that is often challenging and at times not fully appreciated by all concerned. But we do appreciate your role and we are truly indebted to you for your vigilant oversight.

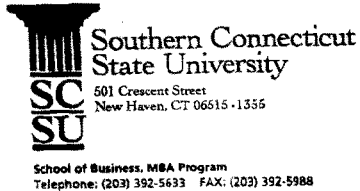
I also want to take this opportunity to thank you for your outstanding and innovative leadership in bringing on stream the ACE NET program that has made risk capital much more readily available for young, growing companies that have historically found it difficult to obtain equity monies. People in the public policy arena have debated for years how to facilitate access to early stage investment funds. Thankfully Advocacy decided to do something about this thorny problem by boldly moving forward and designing a nationwide angel investing network patterned after the highly successful pilot program designed by Bill Wetzel. You were able to corral the support of the Securities and Exchange Commission and the National Association of Securities Administrators, a phenomenal feat by itself. This watershed program will serve as a legacy to you and your Entrepreneur in Residence for years to come.

We trust that Congress will continue to recognize the value of your office and the indispensable role it plays in championing the cause of small business.

Sincerely,

Richard Carroll  
President





June 20, 2000

Mr. Jere Glover, Chief Counsel  
Office of Advocacy  
Small Business Administration  
409 Third Street, S.W.  
Washington D.C. 20416

Dear Jere:

On behalf of the 63 network node operators in 47 states, I want to thank you and the Office of Advocacy for your untiring labor and effort in harmonizing the securities regulations to make it easier for small companies to access capital.

Your work with NAASA and the Securities Exchange Commission has made it possible for us to succeed in having a nation-wide network of operators with the ability to really affect the small business climate in the U.S. Equity capital is now moving from state to state on a regional basis and with the opportunity of investors in California to access companies in New England as an example, there is a redistribution of the wealth. It would not have been possible without your efforts on the behalf of small business.

Through the efforts of the Office of Advocacy we have been able to establish a national presence in a market that others try to address and have been unable to succeed due to large up-front fees or licensing situations. The "no-action" letter granted by the SEC has allowed ACE-Net to be successful, at a cost to the entrepreneur that is manageable.

Again our appreciation for the help and assistance in taking this vision and making it a reality that is of significant benefit to the small business community.

Sincerely,

Dan J. Mitchell,  
Executive Director  
ACE-Net.org,inc



A Campus of the Connecticut State University System  
An Equal Opportunity University

JUN. 21. 2000 4:29AM

NO. 999 P. 2



L F GLOBAL INVESTMENTS, LLC

June 20, 2000

Honorable Jere Glover  
Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, S.W.  
Washington, DC 20416

Dear Mr. Glover,

I am writing this letter to indicate my appreciation for your support to the California Capital Formation and Business Investment Committee. This committee was a part of the Defense Conversion Council which was established by the California Legislative during the mid-nineties.

During that time we were determined to increase the accessibility and availability of equity financing to early stage companies in California. While this process was underway, we received considerable support from your office, and greatly appreciate the responsiveness and assistance provided by Terry Bibbens.

It became clear to those in the California Assembly, Senate and the Trade and Commerce Agency, that the Office of Advocacy was working with our committee in furthering the goal of supporting small business.

We have new initiatives in the planning phase, and I know that our efforts in California can depend on obtaining assistance from your office.

Having served as the Deputy Under Secretary of Defense for Acquisition, during the Reagan and Bush Administration, I understand the difficulties that face small business, and the need for the U.S. to nurture these high technology companies.

Thanks again for your support.

Sincerely,

Milt L. Lohr  
Partner



## Gas Processors Association

President Pat Meyer  
 Conoco Inc., Houston  
 President-Elect Stephen Farnsworth  
 Driscoll Mechanical Services, LP, Houston  
 Vice-President Shirley Ornel  
 Koch Industries, Wichita  
 Vice-President Sam McVey, Jr.  
 ONEOK Gas Processing, L.L.C., Tulsa  
 Vice-President Bob DeLong  
 Texas Energy, L.L.C., Houston

6526 EAST 60TH ST.  
 TULSA, OKLAHOMA 74145  
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Mark P. Butler, Executive Director  
 Ronald G. Brinkman, Secretary  
 Jennifer A. Chimes, Treasurer, Industry Affairs  
 P.O. Box 95584  
 Tulsa, Oklahoma 74158  
 Web: [www.gasprocessors.com](http://www.gasprocessors.com)  
 Email: [gpa@gasprocessors.com](mailto:gpa@gasprocessors.com)

June 20, 2000

Gere Glover, Chief Counsel  
 Office of Advocacy  
 U.S. Small Business Administration  
 409 3rd Street, SW - Suite 7800  
 Washington, DC 20416

RE: Assistance of SBA Office of Advocacy

Dear Gere:

As you know, the Gas Processors Association ("GPA") is a trade association representing 93% of the gas liquids production in the U.S. The majority of our members are small businesses that depend upon equitable treatment for small businesses as provided by federal law. In spite of these protections, federal agencies sometimes tend to overlook the disadvantages in the marketplace faced by small business when implementing federal law. Your Office of Advocacy has been invaluable over the years in assisting GPA to bring small business concerns to federal agencies.

Most recently, the Office of Advocacy coordinated efforts of small businesses with respect to the Environmental Protection Agency's ("EPA") proposed revisions to the Inventory Update Report ("IUR") rule under the Toxic Substances Control Act ("TSCA"). Under the TSCA IUR, GPA members must report data to EPA for natural gas streams processed at their facilities. This reporting duplicates reporting to other federal agencies and therefore unnecessarily burdens companies.

Through the work of your office, GPA's concerns and documents supporting its position were provided to EPA during the drafting of the proposed rule. SBA was instrumental in ensuring that EPA recognized the burdensome and duplicative nature of the TSCA IUR requirements. Ultimately, EPA proposed a rule that moves toward minimizing these burdens.

GPA commends the Office of Advocacy for its consistently professional, dedicated efforts on behalf of small business. Your staff has been fundamental to timely intervention in rulemaking

Letter to Gere Glover, Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
June 20, 2000  
Page 2

proceedings of various federal agencies to ensure equitable interpretation of laws as they apply to small business. GPA looks forward to continued collaboration with your office in future rulemakings.

If you have questions or need additional information, please contact me at 918/493-3872.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Johnny Dreyer". The signature is fluid and cursive, with the first name "Johnny" and last name "Dreyer" clearly distinguishable.

Johnny Dreyer  
Director of Industry Affairs



June 20, 2000

Gere Glover, Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, SW - Suite 7800  
Washington, DC 20416

RE: SBA Office of Advocacy assistance to small business

Dear Gere:

The Council of Industrial Boiler Owners ("CIBO") is a trade association representing nineteen industrial sectors and universities. CIBO's membership is constituted in large part by small businesses, which due to their size and inability to take advantage of economies of scale, are disproportionately burdened by federal regulation. These regulations are typically environment related.

CIBO actively participates in the Small Business Roundtable sponsored by your Office as means to identify potentially burdensome regulations and collaborate with others also affected by those rules. The roundtables providing an invaluable forum for information sharing and direct contact with regulators that would otherwise be very difficult to arrange. CIBO members have also benefitted directly from your efforts to address concerns with specific agency actions.

Just one example of your successful efforts involved a recent enforcement action by the Environmental Protection Agency ("EPA") under the Toxic Release Inventory ("TRI") program. In that enforcement effort, EPA targeted businesses that had failed to report nitrates on their TRI reports and sent out 600 notices of violation that covered multiple reporting periods. Only through the coordination provided by your office did CIBO members and others fully appreciate the scope of this EPA enforcement effort. CIBO learned that like its members, other small businesses fully compliant with TRI were now charged with TRI violations due mostly to unclear regulations, failure by EPA to adequately notify companies of their obligation to report nitrates and even uncertainty regarding the scientific basis for requiring nitrates reporting.

In response to the concerns of the small business community, your office arranged a briefing by the EPA enforcement office and several meetings with EPA decision-makers. These meetings proved fruitful and the matter was satisfactorily resolved. In addition, participants were able to

**COUNCIL OF INDUSTRIAL BOILER OWNERS**

6035 Burke Centre Parkway, Suite 360, Burke, Virginia 22015 • Phone: (703) 250-9042 • FAX: (703) 239-9042


Letter to Gere Glover, Chief Counsel  
U.S. Small Business Administration  
June 20, 2000  
Page 2

make suggestions to EPA for a more informed regulatory process in the future.

Based on this and many other similar experiences with your office, CIBO has great respect for your staff and its dedication to assisting small business in the sometimes daunting federal regulatory arena. The Office of Advocacy serves this critical role with distinction, bringing energy and true dedication to small business. CIBO thanks you for your past efforts and looks forward to collaborating in the future.

If you have questions or need additional information, please contact me at 703/250-9042.

Sincerely yours,



Robert D. Bessette  
President

*Our counsel,  
Scott Segal, sends  
his regards as well —  
RDB*

06/20/00 14:11 FAX 1 615 771 2459

URS / DAMES &amp; MOORE

002

**URS**

June 20, 2000

Mr. Jere Glover  
Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Suite 7800  
Washington, D.C. 20416

**RE: SBA Office of Advocacy**

Dear Jere:

I wanted to take a moment to express my sincere appreciation for all the good work that the SBA office has performed for many years. As you know, I have had the pleasure of working with you and your staff (such as Kevin Bromberg) to reduce the impact on small businesses of several EPA regulations. This positive influence on regulations would not have happened without the involvement of your office and the SBREFA process.

Over the past few years I have witnessed the significant gains that the Office of Advocacy has made in the following EPA regulations:

## Effluent Limitation Guidelines:

- Industrial Laundries
- Transportation Equipment Cleaning
- Centralized Waste Treatment
- Metal Products and Machinery

## Stormwater Guidelines

## Chemical Reporting

For most of these I was a small entity representative for industry in the SBREFA processes and worked closely with your office during and after SBREFA to reduce the impact of these regulations. Together we have established precedent setting regulations and procedures that will likely save the regulated community several hundred million dollars annually.

URS Corporation  
253 Seaboard Lane, Suite 200  
Franklin, TN 37057  
Tel: 615.771.2480  
Fax: 615.771.2459

06/20/00 14:12 FAX 1 615 771 2459

URS / DAMES & MOORE

003


**URS**

Mr. Jerry Glover  
Page 2  
June 20, 2000

Often time's taxpayers like myself legitimately complain about how our dollars are being spent unwisely by our government; the opposite is true for the SBA Office of Advocacy. I applaud the efforts of your office and I hope that your support and efforts will be able to be expanded in the future.

Sincerely,

URS/DAMES & MOORE

  
Jack E. Waggener, P.E.  
Principal/Senior Engineering Manager

cc: Mr. Kevin Bromberg



# PSCA

PROFIT SHARING/401(K) COUNCIL OF AMERICA ■ THE PROFIT SHARING AND 401(K) ADVOCATE  
1200 New Hampshire Avenue NW, Suite 800, Washington, DC 20036-6802 202.776.2020 Fax: 202.776.2222

June 19, 2000

VIA MESSENGER

Jere Walton Glover, Chief Counsel  
Office of Advocacy  
Small Business Administration  
Room 7600  
409 Third Street, S.W.  
Washington, D.C. 20416

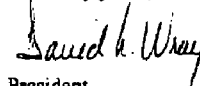
Dear Sir:

I want to take this belated opportunity to thank you and your staff for the immeasurable assistance your office has rendered to the Profit Sharing/401(k) Council of America as well as to the retirement benefits community.

The tireless efforts of your office in arranging meetings with Treasury and Department of Labor officials resulted in resolution of administrative problems that were helpful to the retirement industry and satisfactory to these regulatory agencies. More importantly, the attendance by you and your staff was critical in presenting the difficulties many businesses would face and in suggesting solutions that were workable.

I regret the delay in sending along the Council's deep thanks for the Office of Advocacy's help to our industry. Sometimes it is easy to overlook the simple word "thank you". Paula Calimafde, President of the Small Business Council of America, and the Profit Sharing Council are reminding industry members of the need to express their gratitude to you and members of your staff.

Sincerely yours,



President  
PSCA

Jun-20-00 04:29P VenturePoint

7144760763

P.02



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June 20, 2000

Jere W. Glover  
Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, SW  
Washington, D.C. 20416

Dear Mr. Glover:

The ground breaking efforts of the Office of Advocacy in championing the needs of small business are highly recognized and appreciated in Orange County, California. Orange County is a region of over 100,000 businesses that has seen growth primarily in the small, high-tech sectors. However, access to capital remains a large obstacle to continued growth. ACE>Net and other programs to provide capital access are invaluable tools towards resolving that issue.

The Office of Advocacy is also partially responsible for the successful development and operation of Venture Point, a project of the OCBC. As the nation's only high-tech, high-growth SBDC, Venture Point shares in the Advocacy's vision to create an environment that fosters small business growth and development.

This year alone, more than 80 companies have used this cooperative program to resolve high-growth and high-tech start-up barriers. The continuing success of Venture Point necessitates responsive federal support, as the Office of Advocacy has been heretofore providing.

Sincerely,

Jae DeLong  
Executive Director  
Venture Point – Tech Coast SBDC



**Hearing on  
Exploring Ways to Improve the Effectiveness  
of Office of Advocacy**

**Testimony Presented before  
The United States House of Representatives  
Committee on Small Business  
Chairman  
The Honorable James Talent**

**June 21, 2000**

**Presented By  
Karen Kerrigan  
Chairman  
Small Business Survival Committee**

On behalf of the Small Business Survival Committee (SBSC) and its more than 60,000 members, I am pleased to have the opportunity to testify in regards to this important issue for small business. Increasing the effectiveness of the Office of Advocacy will yield tremendous benefits to America's small business and entrepreneurial sector, as well as American taxpayers and consumers. SBSC remains optimistic about advancing initiatives for small business that have yet to be taken up by the Congress or signed into law by President Clinton, as well as accelerating an understanding within government about how it effects the success of the small business sector through regulation and legislation. We believe technology and emerging trends occurring in the 21<sup>st</sup> century workforce will ultimately compel lawmakers to come to terms with the role of government in a mobile, flexible, technology-driven economy and workforce, therefore we are optimistic that members of Congress, more and more, will view and analyze policy through the eyes of the entrepreneur, and the independent workforce that is emerging.

I am Karen Kerrigan, Chairman of SBSC, a nonpartisan, nonprofit small business advocacy and watchdog organization headquartered in the nation's capital.

Let me state at the outset that SBSC is extraordinarily pleased with the leadership of Chairman Talent and his work leading the Small Business Committee. The Chairman has made a real difference for small business and continues to focus on issues that are significant areas of concern, or opportunity, for entrepreneurs and their workforce. We thank him for his relentless spirit in leading this Committee, as it appears he has left no stone unturned, or no policy issue addressed, if it impacts small business. The topic of the hearing today reflects his ongoing commitment and again we thank him for that.

SBSC has testified on the Office of Advocacy in the past, and our support of their activities, and we are eager to work with Chairman Talent and all members of the Committee and the Office itself to improve Advocacy with the goal of making it a more effective voice and entity for small business. There is no doubt that the Office has been a positive force for small business, and SBSC is also quite pleased with efforts by the Congress and the President to advance key small business issues. But we can all admit that much work needs to be done in spite of current economic conditions. Many issues critical to small businesses remain on a “to-do” list despite all of our efforts to push for passage of specific legislation or certain reforms.

A new report by the Competitive Enterprise Institute, “Ten Thousand Commandments: An Annual Policymaker’s Snapshot of the Federal Regulatory State, 2000 Edition,” notes that in 1999, 4,538 new rules and regulations were at various stages of implementation. Of these, 137 were acknowledged to be “economically significant,” meaning they will have annual economic impacts of over \$100 million each. The number of economically significant rules increased 17 percent over the prior year. *Of these 4,538 new rules, 963 are expected by agencies to have notable impacts on small business, according to the report.* Last year, the government finalized 4,684 new regulations.

These numbers are scary if you are a small business owner, which is why it is so critical that Congress and the Administration address efforts to reform the regulatory system as was the consensus and desire of the delegates of The White House Conference on Small Business in 1995. In addition to supporting the Small Business Regulatory Enforcement Fairness Act (SBREFA), there were a host of regulatory reform ideas that would allow agencies to act more thoughtfully and soberly when proposing new rules. In addition to regulatory reform initiatives that have been requested by small businesses, legislation to make our health care system more affordable to small businesses – like purchasing pools – has not yet moved to the President’s desk. Independent contractor rules and efforts to make the 20 point test used by the IRS more simple and less arbitrary becomes more important for the Congress and President to address as each day passes, as more individuals choose the path of independence in their business and working relationships. Of course, numerous tax issues and the all-important

100 percent meal deduction, continue to be the top issues, the consensus issues if you will, for America's small business sector.

This was driven home again as I attended, and facilitated an open-issues workshop for, the National Women's Small Business Conference in Kansas City, Kansas on June 4-5<sup>th</sup>. The event was hosted by Senator Kit Bond, Chairman of the Senate Small Business Committee, and his colleagues on both sides of the aisle. Without giving away what Senator Bond will fully release in a comprehensive report in the near future, let me just state that the consensus reached on the issues that need to be addressed by the Congress and the President, as well as the solutions, will be no surprise to members of this Committee or advocates of small business. Taxes, regulation, health care, access to capital, etc. – the conference exercise served to reinforce what we already know what we need to do.

In the Open Issues workshop that I facilitated, participants felt strongly about having someone that represents them – their advocate – working inside the government to represent their interests. I mentioned that the Office of Advocacy existed and in conjunction with another workshop recommendation, there was agreement that the Small Business Administration as a whole needs to ramp up efforts on outreach on all its

programs and services.

I bring up my recent experience at the National Women's Small Business Conference, as well as my brief synopsis of the current regulatory state, and unfinished items on the small business agenda not to take away from the fine work that Advocacy has done over the years, but to suggest that they revisit their emphasis – dare I say “reinvent” – and reconsider a strategy that is balanced with a strong offense, rather than oriented more toward defensive action. The draft proposal concerning the transfer of the Office of Advocacy's function to an independent three-member Commission also has merit deserving of SBSC's consideration and input. I will briefly address this and look forward to an open discussion within the context of the hearing and its participants.

There are numerous occasions that SBSC has interacted with the Office of Advocacy. From events such as the White House Conference on Small Business in 1995 to issues such as telecommunications access charge reform, or new rules governing Commercial Mail Receiving Agencies (CMRA) – otherwise known as the P.O. Box dispute, and several environmental regulations, our interactions with Advocacy have been positive experiences. They indeed have a tough job on their hands as the



federal government's departments and agencies continue to crank out new regulations at a very rapid pace, as noted in my testimony previously.

Upon a review of the statute that established the Office of Advocacy, I noted that the office has wide discretion in terms of the activities it can implement or pursue to represent the interests of small business within government. From conducting research as they currently do to "making legislative and other proposals for altering the tax structure to enable all small business to realize their potential" to doing the same for "eliminating excessive or unnecessary regulations of small business," and to "develop proposals for changes in the policies and activities of any agency of the Federal Government" there appears to be no limits (non-financial that is) to ensuring that "all businesses will have the opportunity to compete effectively and expand to their full potential."

From a cursory review of the Office of Advocacy's last annual report to the Congress and President, as well as observing its activities over the past several years, it appears that their function has tilted heavily toward addressing small business concerns *after* a rule has entered the pipeline, and whether agencies are adhering to SBREFA. This certainly is their role along with convening panels to hear the concerns and receive the input from

affected small businesses. The office has made a difference, albeit with varying results, in the convening of these panels. While SBSC believe this is productive work, our preference – and we believe the preference of small businesses – would be to devote a share of the staff's time working on Capitol Hill to push for what small businesses really want – regulatory reform and relief. Expending more effort on the front end to enact meaningful regulatory reform – and supporting members of Congress who have sponsored legislation, while publicly endorsing their efforts – would relieve Advocacy, and more importantly small business, from addressing these issues on the back end.

SBSC believes it is entirely appropriate, and necessary, for Advocacy to devote staff time and resources on working with the business community to advance the recommendations of the White House Conference on Small Business not only on the regulatory reform issue, but additional legislation that was desired by delegates to conference as well.

Listed below are other recommendations that SBSC humbly asks Advocacy to consider in their business strategy and mandate to represent small business. These could have a tremendous impact on the legislative and regulatory process for our shared constituency:

- Encourage Congress to use its Congressional Review powers if a regulation approved by an agency or department will have a negative impact on small business. Congress has not yet used this powerful tool and encouragement from Advocacy will help to push, or remind, Congress that small businesses can be protected when regulatory agencies step out-of-bounds, or do not comply with SBREFA.
- The Chief Counsel for Advocacy in his reports has recognized that the culture of some of the agencies is an impediment to effectively serving the small business community relative to reg flex. The Counsel states in his 1999 Annual Report that “Some agencies have yet to accept the concept that less burdensome alternatives may be equally effective in achieving statutory mandates...Moreover agencies do not yet clearly understand that compliance with the RFA does not mean special treatment for small business at the expense of sound public policy.” SBSC believes that agencies will stand at attention and take notice of their obligations under SBREFA if the President takes an active role in letting the federal government know that this is a priority of the White House. We believe it would be very appropriate for the Office of Advocacy to recommend that the President issue an Executive Order (E.O.) focused on SBREFA, similar to E.O. 12866, which emphasized agency responsibility to determine whether a regulatory action is “significant” and reminded the agencies that the American people deserve a regulatory system that works for them – not the other way around. The President has stated his commitment to small business and encouragement from Advocacy asking the White House to use its authority and persuasion to help change the culture of agencies, but more importantly adhere to their obligations under SBREFA, would quicken the pace of cultural transition at the agencies.
- Although the White House Conference on Small Business convened in 1995, the recommendations that were the product of that meeting are still relevant – some even more today. To SBSC, this recommendation package is a living/breathing document that holds incredible relevance right now. Unfortunately, some of the issues recommended by delegates have been severely demagogued for partisan political purposes. From changing product liability laws, to independent contractor rules and the Fair Labor Standards Act to allow all businesses the option of offering flextime, comp-time to its employees, Advocacy should be standing shoulder-to-shoulder with members of Congress to help pass the will of WHCSB delegates. Each

that was recommended by the WHCSB, a letter, or fax, or email should be sent to every member of Congress reminding them of this fact. SBSC believes the recommendations made by WHCSB delegates will be more quickly addressed if Advocacy weighed in on these issues. SBSC would also recommend that the actual recommendations be posted on the website along with the other WHCSB information.

- Opportunity to file comments through Advocacy's website. Advocacy can be a conduit for small businesses to make their voices heard within the government – particularly when a rule is proposed that impacts small business. Providing small businesses with the opportunity to provide comments through a direct link to agencies considering new rules, and letting small business groups know that Advocacy is fulfilling this role would be an effective use of the office's role as advocate within government. Posting a link to a corresponding agency, with a short paragraph on the proposed rule and it's potential impact on small business, requires little staff time, but would pay huge dividends for small business.

Obviously, SBSC has questions regarding how Advocacy selects issues and decides priorities. For example, why didn't Advocacy have a position on the U.N. Global Climate Treaty? As a small organization ourselves, SBSC understands the issue of resources and how they must be targeted to make a difference. But we also realize that if we are always on defense, we are basically losing the game, which is why I encourage Advocacy to pursue an offensive strategy perhaps through some of the recommendations above.

In terms of the draft proposal that would pull the office out of the Small Business Administration and make Advocacy a three-member commission, SBSC certainly support efforts to make the agency more independent and

less political. After all, small businesses aren't thinking about Republicans versus Democrats when they are trying to make payroll everyday. The total independence of the Office of Advocacy has tremendous appeal to SBSC, and these are the questions we are currently asking ourselves and discussing as we ponder a transfer to a Commission:

1. From a net perspective, even though a Commission may mean the expenditure of more tax dollars, over the long-term does it mean that small businesses and consumers will save money through "smart" or less regulation?
2. Can a statute be written in developing the Commission whereby the goals and activities of the entity are measurable, and always accountable to the interest of small business?
3. Is there any possible way to make the Office of Advocacy, in its current form, more directly accountable to small business and their specific agenda (e.g.: WHCSB recommendations).

These and other questions we are exploring with our small business leaders, friends in the policy community and others to ensure that the voice of small business is effectively represented within the government. I look forward to discussing these issues and more to find solutions so that all of us may better serve those we represent – America's small business sector.

Thank you again Chairman Talent for your ongoing leadership and creativity and I look forward to answering any questions that you and other Committee members may have.



**Testimony of Dan R. Mastromarco**  
**The Argus Group**  
**Before the U.S. House of Representatives, Committee on Small Business**  
**June 21<sup>st</sup>, 2000**

**Chairman Talent and Members of the Committee:**

Thank you for the opportunity to present my views on ways in which the framework for the Office of Advocacy, U.S. Small Business Administration, could be improved. The Office of Advocacy (Advocacy) serves a critical watchdog function not duplicated by the private sector. To perform this function well, the Chief Counsel and his or her staff must be persuasive, accessible and knowledgeable and well funded. However, they must also be untethered from the Administration. The Chief Counsel should not be forced to choose between the roles of a cheerleader, an apologist, a clubby cajoler, a meek dissenter, a sympathetic plaintiff or an individual that is willing to risk his or her political future to do what is right. The Chief Counsel can best fulfill his essential role if the Office is separate from the Administration in a fiscal, jurisdictional and physical sense. That will give him or her the freedom to criticize any pernicious small business policy – even those of the SBA -- and to use tools not limited to friendly persuasion in reforming Federal policy.

Your draft legislation and the legislation proposed by Senator Bond (S. 1346) seek the right result: true independence for the Office of Advocacy. Both initiatives recognize that the organic legislation on which the Office is currently built will never serve to guarantee this result. But the Senate legislation in its present form does not go far enough. True independence cannot be achieved by shifting Advocacy's dependency from the U.S. Small Business Administration to the Office of Management and Budget. Organic legislation should provide for a truly independent Advocacy function by:

- severing Advocacy from the jurisdiction of the Administrator and the Administration;
- cutting the Administration's purse strings to the Office;
- removing Advocacy entirely from the situs of the U.S. Small Business Administration;
- retaining Congressional oversight over Advocacy; and,
- appointing the Chief Counsel or the Chairman of the Commission for a term of office.

Advocacy's 'Declaration of Independence' should also be part of an overall package that strengthens the role of the Office and improves its efficiency. I support:

- allowing the Office to sidestep standard government hiring processes for researchers and advocates;
- increased authorizations of funding for intramural and extramural economic research, for advocacy and for advocacy outreach;
- an upgrade in Advocacy's regulatory weaponry (as part of legislation that establishes an independent advocacy function);

- better prioritization of the focus of economic research, partly towards assisting advocates on near-term issues and partly towards long-range research that steers legislative policy; and,
- elimination of funding for Regional Advocates.

My perspectives derive from my various roles as a Managing Partner in the Argus Group (a law and government relations firm that represents small firms and their associations) and as Chairman of the Prosperity Institute (a Washington-D.C. think tank). More notably, they are rooted in having served the Office of Advocacy (Advocacy) through two Administrations, the last quarter of the Reagan Administration and part of the Bush Administration. For more than 14 years, I have observed the Office. I have seen it function well. I have also seen it be neglected to the point where Congressional appropriators -- with a great deal of shortsightedness -- nearly discontinued its funding.

My comments are not intended to critique the management styles of the present or past stewards of Advocacy. The record can be expected to expand upon the victories of the present Chief Counsel. Frank Swain, one of his predecessors, also excelled, often with fewer regulatory tools available to him. They were surrounded by capable and motivated staff paid mostly in inspiration.<sup>1</sup> But the successes of the Office and its curators have been despite its legal framework and not as a result of it. Selecting good candidates that can rise above partisan politics is not a substitute for guaranteeing freedom. My comments are intended to improve the environment in which any Chief Counsel or Commission must operate.

#### **What Could the Office of Advocacy Become?**

Mr. Chairman: in asking how the structure of the Office might be improved, your Committee is really asking three questions. First, how would the Office Advocacy ideally function? Second, how well has it lived up to this ideal? Third, what specific changes are needed to improve upon it?

If I were only given a single adjective with which to describe an ideal Office of Advocacy, it would be this: "independent." A truly "independent" Office of Advocacy would serve no political master, neither the Administrator, the Administration nor the Congress; rather it would directly serve the interests of America's existing and future entrepreneurs. Input from affected industry groups tempered with sound administrative discretion would influence choices over the research it funded, the issues in which it engaged and the manner of attack. Decisions over priorities and positions would be reached through a meritocracy of ideas. Advocacy would have one driving goal -- the prosperity of America's entrepreneurs and entrepreneurial spirit. Rather than being mistrusted as seeking to help a political patron, the Office would be revered for its objectivity. There would be a check and balance. The President would propose candidates, the Congress would exercise oversight and the Chief Counsel would have legal independence, a definite term and a separate budget.

Although a necessary condition, "independence" is not sufficient to achieve the ideal. An ideal Office would also be highly "effective." The Office environment would be a center of excellence for small business research and advocacy. A spirit of collaboration between economists and attorneys would pervade the Office. Lawyers and economists would work in concert to ensure that rules are designed

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<sup>1</sup> These include Tom Gray, Charles Ou, Bill Scheirer, Barry Pineles, Kevin Bromberg, Peter Weiss and others.

in a manner that minimizes their adverse impact on small firms, particularly when agencies argue that the rule does not have a substantial impact on a significant number of small firms or will not disrupt the industry or when legislators make grandiose pronouncements of the effect of legislation.<sup>2</sup>

Staff advocates would be “aggressive,” “omnipresent” and “omni-prescient.” On the regulatory front, advocates would be so *plugged in* they would learn of rulemakings before they are published and alert the private sector to initiatives in advance of private sector sources. Advocates would regularly intercede in rulemakings before they are in proposed form and at the time of transmission to the Office of Management and Budget. If rules are proposed, Advocacy would aggressively comment and facilitate understanding and reaction by the affected industry groups. If defective rulemakings were nonetheless promulgated, the Office would not hesitate to litigate these infirmities and thereby build a reputation of respect and a body of case law that strengthens the procedural laws.

The Office would also be highly “effective” in results. It would have “influence,” but this “influence” would derive from the respect it garners as an effective spokesman, from the integrity and rigor of its research and from an upgrading of procedural weaponry needed to shift policy under the RFA. The Office’s aggressiveness on the regulatory front would carry over to the legislative front. Advocates would influence Congressional policy, by providing sorely needed economic insight into the impact of legislation on small firms. This would include testimony before all relevant committees; including, Commerce, Natural Resources and Ways and Means.

If given a third adjective, it would be “efficient.” Here it is important to suggest what an ideal Office should not do. An ideal Advocacy would narrow its purpose to the role of advocacy. The Office of Advocacy would not seek to serve as a “Small Business Answer Desk.” It would not engage itself in public relations for the agency or with the Administration. It has enough to do as an advocate for sound small business policy. That should be its only charge.

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<sup>2</sup> There are many examples of this partnership working effectively in the private sector where economists supplement the work of regulatory attorneys. Advocacy has been most successful when this partnership existed. For instance, Advocacy’s economic analysis of the innovation rates of small firms and the impact of the research and experimentation credit (Title 26 U.S.C. section 41) on small firms led to the critical restructuring of that tax expenditure so that it was available for the first time to start up firms and small high technology firms. Without this work, small companies that pioneered the personal computer, the large capacity computer and the human growth hormone would not have qualified for one dime of Federal tax credit; although it is rumored McDonald’s received a credit for pioneering the Big Mac. To take another example, an effective partnership between lawyers and economists resulted in substantial improvements to the civil tax penalty structure by changing the timing of rules for determining deposits of Federal taxes – a system that brought in more than three-quarters of all U.S. revenues. These were examples of what can happen when the economists team with the lawyers.



**How Well Has it Lived Up to Its Potential?**

Today, independence is not built into the structure of the Office or its funding apparatus. The Office is set up as a literal dependent of the Administration. We can start with the fact the Chief Counsel for Advocacy is nominated by the President for an indefinite term, and serves at the discretion of the Executive. The President proposes the budget for his office. From time-to-time, political recommendations are made for his staff. The position of the Chief Counsel is subservient to the Administrator of the SBA, whose role it is to enforce the President's policies.

We don't even have the appearance of independence. The General Accounting Office (GAO) recently published a report on personnel practices at the SBA (GAO/GGD 99 68). The GAO reported that Assistant and Regional Advocates hired by Advocacy share many of the attributes of Schedule C political appointees. Regional Advocates, who are senior staff in the Advocacy, are frequently cleared by the White House personnel office, which is the same procedure followed for approving Schedule C and non-career SES political appointees. The report raised questions, concerns and suspicions regarding the independence of the Advocacy.

Moreover, according to the Senate Report 106-146:

*The director of Advocacy, the Chief Counsel for Advocacy has a dual responsibility. On the one hand, this individual is the independent watchdog for small business. On the other hand, he or she is also a part of the President's Administration. While the Committee believes that the Advocacy and the Chief Counsel should be independent and free to continue to advocate or support positions that might be contrary to the Administration's policies, it has become apparent the Office is not as independent as necessary to do the job adequately for small business*

While we have constructed a framework for the Office that makes the Chief Counsel dependent, we expect the public to place great faith in the role of the Chief Counsel as an independent spokesperson. We expect him to take positions that criticize the Administration on legislative initiative and rulemakings. Moreover, we give Congress very little means to correct the course. As an offset to organizational and budgetary dependency, the Senate can deny the Chief Counsel's confirmation as was done in the past. The Congress can drag the Chief Counsel before Congressional Committees when he or she becomes too much of a political shill. And the Congress can react on a nuclear scale by threatening to defund the agency or the Office. This has happened.

It would be simplistic to attribute the problem of politicization of the Office to any one Administration. To show its bipartisan nature, we can look to what was perhaps the best example of it: the Bush Administration. Rather than having a political Chief Counsel dependent on the Administrator, the President went one step further: he made the equally political decision not to fill the slot for nearly his entire term. No one at the White House saw the rush to have an independent advocate interfering with regulatory policy.

The result was predictable. Until a confirmable candidate in the person of Tom Kerrister, small business policy foundered. Research lagged behind. The Office lost many of its talented personnel. It lost direction. It lost respect. It lost morale. It became a repository for many political appointees who could not find a home in a "real agency," turning it into a bureaucracy where advocates were

literally expected to punch a clock. The key work product were resumes. There was a great deal of confusion. To make matters worse, the vacuum was filled in part by a succession of political appointments and influenced at a distance by the then acting Director of Congressional Affairs. While neither economists nor lawyers, with few exceptions, these stewards knew only one thing for certain: they wanted the Office of Advocacy out of the way for grander things. With guidance only from the Administrator (who eventually resigned), true advocacy halted. And in an ironic twist, the Administration itself promulgated proposals that deeply hurt small firms, eventually embarrassed the Administration and made the press before they were repealed.

In the end, the Office of Advocacy, which has saved untold billions in costs imposed on small business, almost lost its funding. Few in Congress remembered its capabilities, few could measure its value, fewer still could envisage its proper role.

Of course, one will hear the counterargument that a Chief Counsel is really, at heart, *independent*. In a moment of greater probity, we hear the somewhat inconsistent counterargument that the Chief Counsel is set up to be intentionally *dependent* since his influence derives from his political alliance. The thrust of the Chief Counsel's arguments today, for example, is that he is *personally* independent (not that independence isn't important). He argues that "building consensus," "being perceived ... as an ally" "not an adversary," having a "cooperative working relationship," being "in house," and "having access to policy deliberations" are the keys to success.

I disagree that this counterargument merits separation of the Office fiscally, jurisdictionally and financially. No doubt viable candidates for position of Chief Counsel for Advocacy have been somewhat self-selected: they generally have had more in mind than electing the next President. The central flaw in the argument, however, is that it incorrectly frames the debate as a choice between two models: an *aggressive outsider* or a *consummate insider*. If these were the only approaches for the Advocate or the Chairman of the Commission, reasonable minds could differ as to the desirability of one over the other. However, your approach would offer a third model: it would make the Chairman of the Commission an *aggressive insider*. It would expand his sphere of decisional latitude not remove his ability to negotiate as a political insider. Getting Advocacy out from under the Administration and the Administrator doesn't necessary take away from the ability of the Chief Counsel to be a gentle persuader, he gives him more firepower and attendant respect in case gentle persuasion doesn't work. I do not agree that a fox guarding a henhouse is preferable to a watchdog because he knows the way the other foxes think.

In truth, the dubious benefit of the Chief Counsel as a member of the "President's Team" is not really worth the cost. Businesses do not need to rely on the power of a benevolent, consummate political insider who gains respect from political patronage. If procedures for protecting small firms work well, an aggressive Chief Counsel can force compliance with the Regulatory Flexibility Act and command respect on the basis of facts and legal weaponry far more effectively than through pleading. Small firms are themselves a formidable political force if they are organized.

Nothing in this line of argument makes it wrong to ensure independence or give Advocacy authority to promulgate regulations that force compliance with the RFA. If we accept his testimonial that this Chief Counsel is highly independent, does this somehow ensure successors won't succumb to

pressure? If gentle persuasion on the inside is so effective, why has his office shrunk while Chief Counsels successively if unsuccessfully argue that the problem is "uniquely resource constraints?" In this very hearing, we see the Chief Counsel ask for more resources at the very time the Administrator cuts his budget through attrition. What could be more inside than the agency in which Advocacy is housed?

Whether or not an Advocate lacks strength to resist temptation for political partisanship (either in choosing what issues to engage in or how aggressively to pursue them) is a separate problem than the public's perception of bias. Such perception exists. And to the extent it exists, the Office's credibility and persuasive capability is diminished.

And there are limits to the effectiveness of one who derives his power from eloquence or party politics. Arguing against faceless bureaucrats on an arcane rulemaking is one thing, but arguing against Administration policy on issues of greater moment is quite another, for example. When is the last time a Chief Counsel took a position in favor of the full repeal of death taxes, or for full elimination of capital gains relief? It has happened under Republican Presidents. Does this mean that research now shows that only some small family businesses should be allowed to be passed on to succeeding generations? Or could it be that there was some scintilla of party politics involved? When is the last time the Office criticized the SBA itself for its failure to assist small firms effectively? When is the last time research elucidated the problems with central issues like double or treble taxation? When is the last time a Regional Advocate complained of state taxes that cascaded, giving a several-fold advantage to large firms? No matter how politically connected, there is also the fact that the Chief Counsel is usually not as politically connected as a Cabinet level Secretary. The Chief Counsel is half inside and half outside the Administration in the best of times.

Neither the problem of political dependency nor the perception of bias can be removed by relying on the integrity of the appointee: it must be built into the structure of the Office and its funding apparatus.

The Office has fallen short of the ideal in other respects. On the regulatory front, advocates do not have the resources to participate to the same extent as their counterparts in the private sector. There are not enough of them. They cannot engage in the issues to the extent that would optimize their ability to save small business resources. While SBREFA made quantum leaps in their ability to influence regulatory policy, they have not been given the full arsenal of procedural weapons to effect these results. Very little funding has been provided to the Office Economic Research to conduct long term research. Equally important, Advocacy's two key units -- economic research and interagency affairs -- have never really functioned in a coordinated fashion. Economists function in too much of a vacuum. They do not support relevant policy issues necessary for the advocates to succeed in arguing their case to the degree they must. Frequently, they consider their position independent of the advocates and proceed in their role as academics removed from policy fights.

Finally, the Office has historically not fully optimized the miniscule and deteriorating resources it has. Occasionally, Chief Counsels have been involved in actions that can only be described as public relations for the agency and for the Administration. And the Chief Counsel has a significant budget

for “Regional Advocates” who are political plums scattered across the Nation with no perceptible advocacy function or accountability.

**How Do We Improve Upon the Office of Advocacy?**

There are, I believe, three essential problems: the failure of the organic legislation to enable true independence; the failure of Congress to provide an adequate and stable funding source and of the SBA and OMB to articulate its need; and, the failure to have an effective and efficient organizational structure. To transform the Office to its ideal, several key principles that should guide this Committee as it develops organic legislation.

***Principle 1: Provide for a truly independent Advocacy function.***

Several changes should be made to ensure independence. First, serious consideration should be given to the proposal contained in your draft legislation that the Office of Advocacy be overseen by a Small Business Advocacy Commission. The benefit of this proposal is that the Commission would be funded through its own request to Congress and not be dependent on the OMB or the Administrator. The Administration can propose to fund the Commission or not, as it sees fit; but the final authority would rest with the Committees on Appropriation and Small Business. This would remove Advocacy from the welfare of the U.S. Small Business Administration and from the influences of Administration politics.

If a commission design is to be adopted, attention must be paid to the authority of the Commissioners to ensure that the Office retains the dexterity to react quickly and decisively. Bureaucracy is not good for an organization that seeks to fight bureaucracy. But if properly constructed, there would be no more problems with governance by a Commission than in the many businesses that function with a board, or in the many associations that require board approval for action. The legislation contemplates that the Chairman effectively take the place of the Chief Counsel for Advocacy. A key concern with a politically motivated advocate is not that he will act improperly, but that he will fail to act when needed. Here, the failure to act is known to the other commissioners, and there is more assurance that action would be taken.

In contrast, the main problem with the Senate bill’s emphasis on a separate line item is that it is largely illusory progress. The claim it builds a “firewall” between the Administration and the Chief Counsel, might be a bit stronger in rhetoric than substance. Under that proposal, the Chief Counsel will be dependent on the Office of Management and Budget, who directly sets Administration policy -- substituting one political master for another. Instead of a “firewall,” it places the Advocate against the wall and into the line of fire.

A change in funding and governance will go a long way toward declaring independence, but to advance the perception and reality of independence, I strongly urge that the Advocacy Commission or the Advocate and their staff be physically, as well jurisdictionally and fiscally, separated from the SBA. The legislation provides that the principal office of the Commission shall be in or near the District of Columbia but shall not be at the same location as the principal office of the Small Business Administration. The Advocacy office simply should not share the same roof with an agency which, from time-to-time, it should criticize. Already, there are absolutely no connections, except common

hallways, between the staff of Advocacy and the staff of the SBA. The two are already, for all practical purposes, separate. For much of its past, the staff of Advocacy were separately housed.

Two important final points deserve mention. In developing this Commission, the Congress should not remove the Commission from oversight of this Committee. Moreover, whether a Commission or a Chief Counsel is the structure of the Office, the Presidential appointments must be subject to a specific term of office. In this way, Advocates will be more secure in their role without undue influence from the Administration.

It is a systemic problem stemming from the organic legislation that established the Office. Making the Chief Counsel dependent on the Administration for his position and funding is an error in construction. Although we may select a good Chief Counsel who is adept at avoiding political shoals, the fact remains that Chief Counsel knows his political future rests with the President, who pays his salary and has the right to demand control over his priorities.

***Principle 2: Allow the Office to attract the very best and brightest.***

The Office of Advocacy has been able to attract good people. Continuing the practice of allowing the Chief Counsel to hire professionals without going through the normal competitive procedures directed by federal law and the Office of Personnel Management is critical to the mission of Advocacy. Support staff should obviously be exempted.

***Principle 3: Increase authorization and appropriation of funding for intramural and extramural economic research and for advocacy.***

While efficiency can always be improved one thing is certain: Advocacy does not have the resources to do an effective job. Advocacy should be given far more research dollars for extramural basic research. We are falling behind many other Nations of the world in examining small business trends. And for intramural and extramural research that supports advocates, it should be provided separate funding. Instead of more dollars, Advocacy's funding is constantly under a state of siege.

For years, the Internal Revenue Service used to argue that, with additional funding, it could save taxpayers billions of dollars by better enforcement tools. It worked. If we only funded the Office to the degree it saves resources spent by the private sector on burdensome and costly rules, it would be self-funding.

***Principle 4: Adopt regulatory enforcement improvements as part of legislation that establishes an independent advocacy function.***

As the Committee knows, there has been ardent interest in Congress in changing the regulatory processes, either by giving Congress more authority to oversee rulemakings, by increasing the role of regulatory review panels or by requiring public cost benefit analyses heretofore set forth in Executive Orders. The Committee should carefully scrutinize these regulatory changes and include them as part of an overall package that strengthens the weaponry of an independent Office of Advocacy.

Although a thorough review of these changes is beyond the scope of this hearing, there are at least four changes that should be adopted. First, the Committee should remove the effective exemption of the Internal Revenue Service from the Regulatory Flexibility Act on the basis that only rules that

require a collection instrument be subject to the RFA. Many rules that do not require a collection instrument nonetheless require worse -- the payment of disproportionate taxes, require recordkeeping, or new compliance efforts. The Office should be given the tools to challenge IRS rulemakings, whether or not the IRS claims there is a collection instrument involved.<sup>3</sup> There is no reason to exempt the IRS from the strictures of the RFA. If anything, they should be held to a higher standard. Second, the Office should have the ability to hold regulatory review panels with all agencies, in the same manner it now has authority with the EPA and OSHA. Third, the Office, as is contemplated in your legislation, should have the capability to set size standards for purposes of determining when the agencies need to conduct an Initial Regulatory Flexibility Analysis. You might want to consider allowing the Office to actually write the IRFA. Fourth, SBREFA should be expanded. It should be triggered whenever any regulatory agency comes out with a proposed rulemaking that threatens the existence of an industry or has a significant effect on a substantial number of small businesses.

***Principle 5: Better coordinate economic research functions.***

Several improvements can be made here and guidance should be provided in the organic legislation. First, Advocacy should better ensure that research dollars are spent in a manner that strikes an appropriate balance between long term research and short-term policy research objectives.

When provided the funding, Advocacy should be an organization that develops long-term research that steers economic policy over a longer time horizon than Congressional cycles.<sup>4</sup> At the same time, the economic arm of Advocacy should have the economic resources and the infrastructure to react convincingly and swiftly to relevant policy issues that are looming on the political horizon. The Office of Advocacy should serve as a resource to the private sector to help them demonstrate the impact of regulatory or legislative alternatives. Research topics should be submitted based partly on their relevance to policy issues, and considerations of relevance should be driven by panels of interested parties that include the advocates themselves, the Congress, the private sector and the economists within the Advocacy. There should be more accountability to the focus of economic research towards policy objectives and there should be much greater coordination between economists and advocates by reserving funds for this support.

In addition to funding research at an acceptable level, creative means should be employed to leverage the resources of other agencies. The Congress might fund specific fellowships at the Office of Advocacy to ensure that advocates, particularly economist staff, can work one or two years with other agencies to “shake them up” to develop critical data and analyses. Partly though its fellows, the Office of Advocacy should itself be an advocate within the Federal government for the generation of research data, statistics and analyses from other agencies that will illuminate the small business sector and leverage Advocacy research resources. So much government policy, from procurement policy to monetary policy, is derived from data within the control of other Federal government agencies. However, these agencies often do not properly take into consideration what types of data are most useful for formulating small business regulatory and legislative policy. Advocacy should work with

<sup>3</sup> The IRS has never really complied with the Regulatory Flexibility Act in 20 years and the new legislation does nothing to change this.

<sup>4</sup> Many issues that are not perceived of urgent political import are nonetheless of key importance to future debates. Social Security reform, access to capital and health care are key examples where Advocacy had pioneered research. From these longer-term analyses, Advocacy can help direct policy initiatives rather than having them formulated in a vacuum.

the Bureau of Labor Statistics, the Statistics of Income, Census, the Bureau of Economic Analysis, the Office of Tax Analysis, even the Joint Committee on Taxation, to ensure that their data generation or their analyses properly take into account its utility for small firms. Ken Simonson, through the strength of his efforts, is exemplary.

**Principle 6: Stop funding “Regional Advocates.”**

Considerable resources can be saved by eliminating these political positions. These are simply plum positions at the taxpayer’s expense. Little oversight is provided into what these “Advocates” really do or their qualifications for the positions.

**Conclusion:**

Let me end by highlighting the importance of your review and by complimenting you, this committee and your staff, particularly the very able small business advocate Barry Pineles, on taking the time to carefully consider how Advocacy can better fulfill its essential function. To an outside observer, this hearing is on a trivial issue of good government. Issues of good government do not always make it in the Washington Post. We are engaged daily in battles more immediately newsworthy. Across town, small bus owners are fighting for their lives against a Department of Transportation proposed ‘hours of service’ rulemaking that was developed without a scientific basis and with total disdain for regulatory process.<sup>5</sup> Here in Congress, small firms are seeking to show that the death taxes result in a leveraged Federal buyout or that the income tax has not descended on us like manna from heaven.

However, your choice to review the structure of Advocacy transcends these important issues. As important as they are, they are really just skirmishes in the endless battles that small firms face. Through this hearing you are acknowledging that the defeat of ill-conceived rulemakings and policies is more of a process than an event. You are acknowledging that it is just as important to quash dumb ideas before they become news. You are acknowledging that we must never become so embroiled in each fight that we forget to look at the war strategy: forget how to build our defenses; forget what we need in our arsenal; or forget that our success in ensuring a healthy small business sector depends on our understanding of how small businesses function and of the true effects of rules and laws upon them. You are acknowledging that there is a growing not diminishing need for Advocacy in a government that regulates its citizens more, invades its privacy more, imposes more costs upon them, and extracts more in resources than at any period in the history of our nation.

Some may react defensively and misinterpret this hearing as a sort of *argumentum ad hominem*. Your review may not be welcomed by all. However, you are paying the Office and its mission the highest compliment by engrossing yourselves -- not in the simple debate of how many dollars to allocate to the Office -- but in the more essential debate of how we might restructure the Office to fulfill its essential mission better. I urge you to think of yourselves as authorizing a defense bill; only this time it is the defense of America’s entrepreneurs at stake.

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<sup>5</sup> That rule will not only make the safest form of transportation less safe but will result in small business closures, fewer consumer choice and higher costs. In their haste to regulate, the DOT did not even bother to perform the perfunctory regulatory processes such as certifying the rule as not having a substantial impact on small firms.



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**TESTIMONY OF**

**James Morrison**

*Senior Policy Advisor  
National Association for the Self-Employed*

Before the  
Committee on Small Business  
U.S. House of Representatives

21 June 2000

**Regarding the Effectiveness and Independence of the SBA  
Office of Advocacy**

*"Serving the Needs of Small-Business America"*

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Chairman Talent, Representative Velázquez, members of the Committee, thank you for inviting me to appear here today. I am James Morrison, senior policy advisor to the National Association for the Self-Employed. On behalf of our NASE members in every Congressional District in the nation, and all of the nation's 15 million self-employed individuals, we commend this Committee -- and its Subcommittee on Regulatory Reform and Paperwork Reduction, headed by Representatives Sue Kelly and William Pascrell -- for your continuing vigilance and seriousness in fighting the overregulation of small business.

Today's hearing focuses on the effectiveness of the Office of Advocacy at the US Small Business Administration, especially in implementing the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA), and whether the Office should be more independent. I have had a personal and professional interest in this subject since Congress first considered the RFA in the late 1970's, so I particularly appreciate the opportunity to discuss it with you today.

The Committee also has invited comment on draft legislation that would transfer the Office's functions to a three-member independent Commission.

#### **IMPROVING ADVOCACY'S EFFECTIVENESS**

Certainly steps can be taken to improve the overall effectiveness of the Office of Advocacy. Many ideas for doing so that have come from the House and Senate Small Business Committees are right on target, as will be discussed in a moment. But these initiatives should be kept in context. Advocacy isn't *ineffective* now. Its interventions in the federal regulatory process often bring about positive changes in regulations and reporting requirements. Its economic data have supported many small business-friendly policy initiatives. Its technical studies have helped counter agency bias in key regulatory proceedings. And its closely-reasoned support for a number of small business legislative initiatives have helped shift the views of the entire Executive Branch on several occasions. Overall, the Office of Advocacy is held in high regard within the small business community. It is viewed as having skillfully used its somewhat limited powers under the RFA and SBREFA to fight tenaciously in the bureaucratic trenches for small business. This day-in and day-out fight has helped generate a healthier climate for entrepreneurship in this country.

Somewhat less well known here in Washington, but equally admired, has been Advocacy's spotlighting of state-level "best practices" for encouraging small business. Conferences like last week's research symposium on small business and banking also help broaden policymakers' understanding of economic changes affecting small business, and prepare the ground for future legislative initiatives.

So in recent years, criticisms of Advocacy within the small business community have been relatively minor and rare.

Still, continuous improvement is both desirable and feasible, so it is fitting that Congress hold hearings like this.

#### **A. Strengthening the laws – the RFA and SBREFA**

The search for steps to improve Advocacy's effectiveness probably should begin with the RFA and SBREFA. Advocacy's core mission of fighting the overregulation of small business can only go as far as those statutes will allow. Each of those laws was focused primarily on new procedures and analyses that regulatory agencies would have to perform, and only secondarily on the rights and responsibilities of the Office of Advocacy in the regulatory process. Over time, that has opened up some gaps. Now may well be the time to fill them in.

Where Advocacy was given a clear grant of authority by the RFA and SBREFA, it has become a strong bulwark against agency overreach.

Consider the ruling by the U.S. District Court in the *Northwest Mining* case<sup>1</sup>. At issue were the Interior Department's bonding requirements for small hard rock mining companies in the West. The affected companies argued that the rules were unnecessarily burdensome and discriminatory. Advocacy used its authority under the RFA (as clarified by SBREFA) to file an *amicus* brief in the case, citing both procedural and substantive disagreements with Interior. The Court remanded the rule back to the agency with a stern rebuke – and did so on summary judgment, seeing no point in even holding a trial. Why? Because Interior ignored the plain language of the RFA that it was required to submit its definition of small business to Advocacy.

By contrast, consider the ruling of the Court of Appeals in the *American Trucking Associations* case.<sup>2</sup> At issue were EPA "clean air" rules. The agency cunningly handed implementation of the rules to the states -- and then claimed to have no control over the rules' impact on small entities, thereby evading most of its responsibilities under the RFA and SBREFA. Advocacy protested that EPA was misinterpreting and dodging the laws. The Court disagreed. Noting that Congress never explicitly granted Advocacy administrative authority over the RFA, the Court refused to grant "deference" to Advocacy's interpretation of the RFA and EPA's actions under it.<sup>3</sup>

If allowed to stand, the ATA ruling shoots a real hole in Advocacy's effectiveness. But not entirely unexpectedly. The Court simply focused on one of the "gaps" that wasn't completely closed at the time Congress passed the RFA and SBREFA.

<sup>1</sup> *Northwest Mining v. Babbitt*, 5 F.Supp.2d 9 (D.D.C., 1998)

<sup>2</sup> *American Trucking Associations v. Environmental Protection Administration*, 173 F3d. 1027 (D.C. Cir., 1999), especially pp. 12-15. This case is currently before the Supreme Court on other grounds.

<sup>3</sup> "First, the small business petitioners contend that we must defer to the Small Business Administrations interpretation of the [Regulatory Flexibility] Act, as expressed in a letter to the EPA from the SBA's Chief Counsel for Advocacy.... The SBA, however, neither administers nor has any policymaking role under the RFA; at best, its role is advisory.... Therefore, we do not defer to the SBA's interpretation of the RFA. See *Scheduled Airlines Traffic Offices, Inc. v Department of Defense*, 87 F. 3d 1356, 1361 (D.C. Cir., 1996) (no Chevron deference owed to agency interpretation of statute it does not administer)." *ATA v. EPA*, at 13-14.

**The top “effectiveness” priority: requiring agencies to defer to Advocacy’s interpretation of the RFA.**

The ATA decision shows a pressing need for Congress to act. Unless Congress resolutely “closes the gap” in RFA enforcement, agencies will be tempted to ignore Advocacy’s comments and guidance -- and the whole RFA process will be deeply eroded.

Fortunately, the proposed bill would address this pressing problem forthrightly.

- Section 205(b)(1) of the draft bill (p. 15, lines 14-17) would authorize Advocacy to issue regulations governing agency compliance with the RFA.
- Section 206(a) of the bill (p. 17, lines 8-12) would mandate that agencies give “great weight” to Advocacy’s comments. This was arguably Congress’ intention all along. If enacted, this section would clarify that intention.

Together, these two provisions would have a profound impact on Advocacy’s statutory muscle – and therefore its effectiveness – in the rulemaking process. The NASE strongly urges this Committee to approve these provisions.

**The next key priority: accounting for “indirect impacts”.**

The ATA decision also highlighted a long-standing weakness of the RFA – that it does not require agencies to assess the *indirect* impacts of their rules on small business. Advocacy was essentially powerless to attack EPA’s evasions, since, by handing the final decisions off to the states, the agency had basically turned the direct effects of the rule into indirect effects.

This loophole must be closed. Congress need not require the agencies to assess vague second- and third-order indirect impacts. But it should mandate that RFA analyses include those significant indirect impacts that an agency reasonably could have foreseen and / or those raised in review panels or comments on proposed rules.

The Committee has long been aware of this issue, and indeed anticipated it some years ago. So the draft bill would be strengthened, and Advocacy’s effectiveness enhanced, by the inclusion of new RFA language regarding “indirect” impacts.

**Expanding the Review Panels.**

One of SBREFA’s most important innovations has been the creation of Advocacy Review Panels at the Environmental Protection Agency and Occupational Safety and Health Administration. These panels are convened prior to the publication of proposed rules, whenever such rules are expected to have major impacts on small business. The panel process has won praise even from the agencies themselves. By bringing together Advocacy (aided by affected small businesses), the Office of Management and Budget and the rulemakers, the review panels surface likely compliance problems far in advance and help build consensus around fair rules that are easier for the agencies to implement.

This Committee and the House Judiciary Committee have reported out a bill (H.R. 1882) that would streamline the review panel process and add one agency to it – the single most important agency for America’s small business community, the IRS. The Senate unanimously passed a similar measure (S. 1156). In addition to their benefits for small business, such review panels would immeasurably aid the IRS’ efforts to shift to a “customer service” orientation in its dealings with taxpayers.

Unfortunately, objections from long-time RFA opponents in the Treasury Department (not the IRS itself) have delayed floor action on this bill for more than a year.

The NASE strongly backs this Committee in its struggle to break this logjam. H.R. 1882 would enhance Advocacy’s effectiveness and even help the IRS and Treasury, despite the latter’s resistance.

Proposals also have surfaced to include other agencies in the review panel process. The Mine Safety and Health Administration, a counterpart to OSHA, is a logical candidate for inclusion. So is the Department of Transportation, which writes some of the nation’s most expensive regulations. Elements of the Department of Agriculture, like the Agricultural Marketing Service, and the Department of Health and Human Services, like the Health Care Financing Administration, also should be considered.

#### **Putting the Ombudsman and the Regulatory Fairness Boards under Advocacy.**

SBREFA also created the post of Small Business and Agriculture Regulatory Enforcement Ombudsman, as well as a set of “Regional Small Business Regulatory Fairness Boards”. The purpose of these entities is to identify regulatory enforcement problems in the field, after regulations have been finalized.

So far, the results of these efforts have been mixed. One problem has been that positioning the Ombudsman and the Regulatory Fairness Boards under the SBA Administrator, rather than under the Office of Advocacy, seems to be inefficient. The SBA Administrator has no obvious way to use the information thus gathered to improve the federal regulatory process, no inherent expertise in solving the problems identified, and no serious leverage to exert in encounters with other agencies. Small businesses impacted by regulatory enforcement actions ought to have a direct line of communication with the part of SBA that is best positioned to help them – the part with history, expertise and leverage in the regulatory process. The part that can use their information to negotiate with offending agencies and credibly challenge unnecessarily burdensome regulations. And that part is the Office of Advocacy.

The draft bill also addresses this problem directly. Section 302 (p. 24, line 1 through p. 25, line 12) would channel the communication from the Ombudsman and the Regulatory Fairness Boards through Advocacy. The NASE strongly supports this concept, too.

#### **Expanding the periodic review of existing regulations.**

Under section 610 of the RFA, agencies are required to review their existing regulations every ten years, and change or eliminate those that are no longer needed or that unnecessarily harm small businesses.

This requirement now has been on the books for about twenty years. So in principle the agencies should have completed two separate reviews. Yet very few agencies have made any effort to comply even once. GAO has repeatedly criticized the agencies for their poor performance on this, and so has this Committee. Agency protests that the periodic review requirements are not feasible ring hollow when those same agencies claim to have reviewed all their existing regulations in a two-year period as part of the "Reinventing Government" initiative.

A renewed emphasis on the periodic review requirement would complement the shift of the Ombudsman and the Fairness Boards to Advocacy – a change that the draft bill already envisions (as noted above). Linking these two provisions would set up a means of responding fully to complaints from the field about regulatory enforcement. When enforcement actions were found to be rooted in faulty or obsolete regulations, Advocacy could press the agencies responsible for those regulations to move them onto the periodic review schedule.

#### ***B. Protecting Advocacy's resources.***

The job that Congress and the small business community want Advocacy to do requires resources. Yet there has been a distinctly "unfunded mandate" quality to the allocation of funding and personnel to Advocacy. For example, in FY1991, the Office of Advocacy had an independent research budget of \$1.7 million and employed 79 full-time professionals. These figures dropped to \$1.5 million for independent research and 53 professionals in FY1995, the year before SBREFA was passed – with its new requirements for Review Panels and its expanded leverage for Advocacy to force agency compliance through the threat of judicial review.

Then, instead of rising to meet the new mandates, resource allocations actually *declined*. Staff has declined steadily, hitting 47 professionals in the current FY. Advocacy's share of SBA's budget has shrunk from 1.31% in FY92 to 0.5% today. Funding for Advocacy's independent research was actually "zeroed out" for two years. This latter "penny-wise and pound-foolish" decision by Congressional appropriators nearly triggered a major setback for small business. Funds couldn't be found to maintain Advocacy's crucial panel study of small business "births" and "deaths" over decades. Data from this ongoing study has supported economic policy decisions and regulatory interventions for years. To avoid losing track of the cohort, Advocacy had to go "hat in hand" to the SBA Administrator, seeking "reprogrammings" from other agency funds. Episodes like this force Advocacy to compromise its independence from the rest of SBA.

While funding for Advocacy's research has risen over the last three fiscal years, it still has not reached earlier levels. Neither has the number of professionals employed by the Office. It is fundamental to Advocacy's effectiveness that Administration budget requests, and Congressional appropriations, give the Office adequate resources to do its job.

***c. Should Advocacy become an independent commission?***

Effectiveness turns on questions of having an appropriate organizational structure, as well as having strong laws to enforce. Should Advocacy be more independent? The Committee's discussion draft bill would remove Advocacy from SBA and the Executive Branch, transferring its functions to an independent commission.<sup>4</sup>

Would this independent Commission further increase Advocacy's effectiveness?

There is no simple answer. On the side of an independent commission are considerations like these:

- Advocacy has sometimes lacked high-level White House support. One President left the office of Chief Counsel vacant for more than three years. Such neglect would presumably be more difficult if Advocacy were a Commission with higher visibility.
- As long as Advocacy remains in the Executive Branch, it will be unequal to OMB in enforcing its will on the agencies.
- Although Advocacy can sometimes "get ahead of" Administration policy, even the most politically skillful Chief Counsel must take cognizance of an Administration's overall tone in dealing with economic and regulatory issues. An independent Commission could probably forge its own path on policy to a greater degree.
- Permitting Advocacy to intervene *as a party* in adjudicatory proceedings at other agencies,<sup>5</sup> as the draft bill proposes, would give it broader powers to help small business.

There are, however, also disadvantages to the "independent commission" approach.

- Much depends on whether one assumes that Advocacy's relations with agencies are, or need to be, fundamentally adversarial. Today Advocacy has a wide range of agency contacts, many of them informal and amicable. This occurs because agency heads and White House policy types -- who are political appointees -- can view Advocacy as, in some sense, part of an Administration "team". Removing this "political lubricant" would almost certainly assure that Advocacy's interactions with agencies become formal, adversarial, lawyer-intensive and more time and resource consuming.
- One of the most noteworthy successes of SBREFA has been the Review Panels at EPA and OSHA. As noted above, the Committee and many of us in the small business community are working to expand the panel process to include IRS and perhaps other agencies. Yet it is unclear how the process would work under the draft bill. At present, all members of each panel are full-time employees of the Executive Branch of government. This allows the panels to pass legal and Constitutional muster. But take Advocacy out of the Executive Branch and

<sup>4</sup> The Senate has taken a somewhat different approach in the bill it passed, S. 1346. That bill would separately authorize Advocacy and to some extent further insulate the Chief Counsel from outside political pressure, while keeping the operation within the Executive Branch.

<sup>5</sup> So-called "554" proceedings, under §554 of the Administrative Procedure Act.

"separation of powers" questions emerge, particularly if agencies are required to have Advocacy's assent before issuing regulations.

- A three-member Commission, as envisioned by the draft bill, may be much less decisive than an Office of Advocacy headed by one person. The bill calls for majority votes by the Commission on all major issues. At a practical level, this would mean a large volume of activity devoted to scheduling, docketing, having meetings and exchanging paper. And as with any collective decision-making apparatus, it would also mean a multitude of internal tradeoffs and logrolling. Requiring all three members of the Commission to be lawyers, as the bill proposes, would almost certainly slow down the pace even more.
- Even a Commission wouldn't be truly free from political pressure. The Commissioners would be political appointees. They would come in with philosophical orientations, friends and allies, foes and adversaries. Presumably they would be concerned about their careers in their respective political parties after having served their terms. Political influence might be more muted, but it would be far from nonexistent.
- Giving the Commission the right to intervene as a party in agency adjudicatory proceedings would entail new risks. As a general rule, Advocacy has avoided involvement in disputes between agencies and individual businesses unless larger legal or regulatory issues were at stake. Most adjudicatory proceedings are not about overarching principles; they tend to be quintessential disputes between parties. Advocacy participation in these proceedings also would surely require considerable staff time and funding resources. More Advocacy lawyers would be filing more briefs, responding to more briefs, showing up more often in (quasi-) courtrooms, and devoting far more time to individual disputes. In the end, Advocacy would probably have to limit itself to a few such cases a year, no doubt leading to much internal jockeying among those disputants wishing to be selected. And the time and costs of these proceedings could pull resources away from "bigger picture" issues.
- To the extent that such "554" proceedings warrant more general interest in the small business community, a recent development may lessen the need for an Advocacy role. Our colleagues at the National Federation of Independent Business have recently launched the NFIB Legal Foundation, which will be focused squarely on litigating small business regulatory cases, has just filed its first lawsuit. Perhaps a role can be identified for the Foundation in these "554" proceedings. It might be prudent to allow this private sector initiative time to work before engaging Advocacy more fully in these proceedings.
- Setting up such a Commission would be a formidable political task. Keeping Advocacy adequately funded at its *current* level has been very difficult politically, and a Commission would be at least an order of magnitude more expensive. It is not at all clear what the compelling "slam dunk" arguments would be – outside the immediate small business community – for this entirely new agency, with its greatly increased funding.
- Even within the small business community, this proposal could be troubling. Many groups in the community have long argued for smaller government. Shifting gears suddenly, when "bigger government" suits small business, could expose the groups to charges of political hypocrisy. Yet doing nothing to aid the bill could

expose them to charges of indifference to government overregulation of small business. Either way, the groups could be weakened politically, which is not a desirable outcome for small business in general.

On balance, then, the NASE believes that the disadvantages of the independent commission approach seem to outweigh its advantages. We want to stress that this is not a final and irrevocable decision on our part, but simply our considered judgment about the pro's and con's of the proposal, as drafted, at this point in time.

In the meantime, however, we would strongly urge the Committee to adopt incremental steps that would strengthen the existing Office of Advocacy, while leaving the door open for such a Commission in the future, if legal and political conditions warrant it.

These steps include:

- Creating a separate authorization for the Office of Advocacy, like that passed unanimously by the Senate (S.1346). This will reinforce Advocacy's independence from the rest of SBA, which many in the small business community support and which is an outcome the Committee appears to favor. Apparently the Administration also is willing to agree, which is an added benefit.
- Giving Advocacy's views "great weight" in RFA and SBREFA rulemakings, such as provided for in Section 206(b) of the draft bill.
- Enacting authority for Advocacy to issue regulations governing agency compliance with the RFA, such as those in Section 205(a)(1) of the draft bill.
- Closing the "indirect impact" loophole by requiring that RFA analyses include those significant indirect impacts that an agency reasonably could have foreseen and / or those raised in review panels or comments on proposed rules.
- Urging Congressional leaders to allow floor consideration of HR 1881, putting the IRS under the review panel process.
- Placing the National Ombudsman and the Regulatory Fairness Boards under the Office of Advocacy.
- Expanding the review of existing regulations under Section 610 of the Regulatory Flexibility Act.
- Urging Congressional appropriators to allocate sufficient resources to Advocacy to be able to accomplish its mission.

Mr. Chairman, that completes my testimony. I would be happy to accept questions at this time.

*Statement required pursuant to rule IX, clause 2(g)(4) of the Rules of the House of Representatives: Neither the National Association for the Self-Employed (NASE), nor any entity represented by it or by Mr. Morrison has received any contract, subcontract, or grant from any federal source during the last three fiscal years.*





**TESTIMONY OF TODD MCCRACKEN  
PRESIDENT OF  
NATIONAL SMALL BUSINESS UNITED**

*Regarding the  
Small Business Administration's Office of Advocacy*

**Before the House Committee on Small Business**

**June 21, 2000**

Mr. Chairman and Members of the Committee:

My name is Todd McCracken, and I am President of National Small Business United. I am very pleased to be here today to share our views on the Small Business Administration's (SBA) Office of Advocacy and ways this office could be further improved and strengthened. This office is crucial to the small business community, and it has performed at a consistently high level, particularly when a permanent Chief Counsel is in place. However, we believe that it is time to strengthen the Office of Advocacy and further raise its profile. If the Office of Advocacy had been given appropriate authority and resources 20 years ago, the U.S. small business community might not be in the regulatory quagmire in which it finds itself today.

National Small Business United (NSBU) represents over 65,000 small businesses in all fifty states. Our association works with elected and administrative officials in Washington to improve the economic climate for small business growth and expansion. We have always worked on a bi-partisan and pro-active basis. In addition to individual small business owners, the membership of our association includes local, state, and regional small business associations across the country.

NSBU has always been supportive of the Office of Advocacy. In fact, most leaders in the small business community deem advocacy to be the SBA's most important role. The Office of Advocacy is the only consistent resource for reliable information about the status and role of small business in the American economy. The Office of Advocacy is the only government institution analyzing the impact of government actions and regulations on small business. The Office of Advocacy is the only federal organization soliciting and funding research into the activities and needs of small business. And all of these activities are vital to designing government policy for small business and for considering small business in the legislative and regulatory process. A strong Office of Advocacy is fundamental to the goals of this Committee and the small business community.

#### **BACKGROUND**

The Office of the Chief Counsel for Advocacy was created in 1976 to represent the needs and concerns of the small business community in the federal government's legislative and rulemaking processes. We at NSBU are especially proud of the creation of this office, because the organizations that now constitute NSBU played a very major role in the initial conception of the Chief Counsel's role and in making the Office a reality. Former NSBU president Milton Stewart became the first Chief Counsel for Advocacy in 1978.

With the passage of the Regulatory Flexibility Act in 1980, the Office was given an expanded role to monitor and comment on the federal regulatory process under that Act. Though the Office was given few powers to actually enforce the Regulatory Flexibility Act (an issue we all continue to address to this day), it has nevertheless been able to make significant changes in key regulations through the years, from the force of diligence and hard work.

#### **THE INDEPENDENCE OF THE OFFICE OF ADVOCACY**

The Chief Counsel for Advocacy has always been intended—and perceived—by most to be an independent voice for small business housed within the Small Business Administration. But that independence doesn't actually exist in the law. This tug between legal reality on the one hand and perception and expectation on the other is another way that the Office is a unique institution within the federal government. Certainly, maintaining this independent role, while being a Presidential appointee within an agency, is one of the ongoing difficulties of this job.

In the past, we always believed that this balancing act produced the best outcome for small business. In previous testimony before this committee, we have not advocated increased independence for the Chief Counsel. After all, Chief Counsels can be more effective in advocating for small businesses in the regulatory process if they are perceived

by agencies as part of the Administration, rather than an outside "bomb-thrower." Yet a very healthy degree of autonomy is also called for in order for the Chief Counsel to have the confidence of Congress and to ensure that the Chief Counsel does not feel pressure to "go along" with another agency within the Administration. Balanced properly, this situation can create that "win-win" scenario that everyone seems to be after these days.

This balance is a difficult one that every Chief Counsel must seek to maintain, but which they cannot maintain alone; they must have an engaged and supportive partner in the SBA Administrator. Over the last 25 years they seem to have done well in that regard. While we would be kidding ourselves to think that there have never been tensions, we believe that past and present Chief Counsels for Advocacy have managed to work through most potential problems in a reasonable way.

Nevertheless, events of the last few years have convinced us that the balance that we have relied upon may be tipping too far away from independence. The Office has had to fight to maintain funding within the agency, and has been potentially affected by personnel freezes stemming from problems in the rest of the agency. Also, SBREFA has given greater responsibilities to the Office, which could put them in a somewhat more adversarial position with other agencies.

Given these and other developments, we have broken with our past stand, and feel it is time to impart a greater degree of independence to the Office. The Senate Small Business Committee has included in the SBA reauthorization bill a proposal to give the Office of Advocacy greater independence primarily by requiring a separate line-item appropriation for the Office. We fully support this approach, and hope this Committee will move forward this year to also adopt this language, while we continue to debate and explore other alternatives for strengthening the Office. There is nothing in the Senate proposal that would substantially contradict other proposals, should they be enacted sometime in the future.

The Committee staff has furnished us with a copy of a draft bill, which would create a Small Business Advocacy Commission. To the extent that the goal is to create a fully independent agency advocating for small business, this is an excellent bill. The lines of authority are clear and well thought-out, and the creation of three distinct bureaus is a very sensible step, recognizing the key importance of these roles within the office. But I believe the small business community should be very clear about what its goals would be in embracing such a change. There is little doubt that the agency's job would become simpler, with fewer inherent conflicts (though the Commissioners will often have their own political axes to grind, and these biases will certainly affect Commission decisions) and fewer of the "balancing acts" that I described before. This clarity of purpose might make us all feel

better and more confident that there is no (or less) Administration influence on the office. But will it make the office more effective in carrying out its duties on behalf of small business?

We are not yet convinced that the benefits of full independence completely outweigh the benefits of having an advocate *within* the administration. The Senate approach would move the Office closer to independence without this fundamental realignment. It would seem to us wiser to begin with this more incremental approach, while recognizing that a more fundamental overhaul could prove beneficial in the future.

An area where the Commission concept makes a great deal of sense is in the creation of continuity. The independence and effectiveness of the Office of Advocacy is seriously compromised when there is no permanent Chief Counsel. Here, the record of the executive branch has not been good. For a quarter of the years since the Chief Counsel's job was created, there has been no permanent Chief Counsel for Advocacy. The most notorious example of this vacuum within the office is during the Bush Administration, when there was no permanent Chief Counsel until the last few months of the President's term. The Clinton Administration then also took well over a year to fill this critical post. During this period, the Chief Counsel's Office lost a great deal of credibility and expertise that it has

taken the current Chief Counsel, despite his best efforts, some time to rebuild. There can be little doubt that the perceived independence of the Chief Counsel was a prime factor motivating Presidents to make this particular nomination a very low priority. The "teampayer" jobs come first. This issue should certainly be addressed, and perhaps the commission idea is one way to go about it.

### **RESEARCH**

While I have this time, I would like to point out that, whatever approach we take, the research arm of the Office must be strengthened. But it also makes sense to meld this function more fully with the interagency function, so that one more fully supports the other. The Office of Advocacy is the only organization within the federal government that has an arm specifically devoted to researching the role of small business in the American economy, and there must be more funding and attention paid to what could be a much more pivotal function.

### **CONCLUSION**

The SBA Office of Advocacy is one of those inspired functions of government that actually works well. However, it is now time to improve and strengthen the office. We believe that the Senate bill is the best first step in this direction and should be enacted in the short term. Chairman Talent's bill has much to commend it, as well, especially if we reach the conclusion that the more modest measures of the Senate bill have not worked. But first, I believe that we



should give those changes the trial period they need, while continuing the debate about how we can create a more effective office, and how we weigh the relative benefits of full independence .

**Testimony of Keith N. Cole  
Before the  
House Committee on Small Business  
June 21, 2000**

Mr. Chairman, Members of the Committee:

My name is Keith Cole, and I am a Partner in the law firm of Swidler Berlin Shereff Friedman, LLP. I appreciate the opportunity to testify at today's hearing on the Small Business Administration's Office of the Chief Counsel for Advocacy and the discussion draft of legislation that would transfer the functions of the Office to an independent Commission.

I would like to state for the record that I am not testifying today on behalf of my law firm, or any particular client, but solely on my own behalf. My testimony is based on my expertise as former Regulatory Affairs Counsel to the Senate Committee on Small Business, and my experience in the private sector since leaving Capitol Hill. While in the private sector, I have followed closely the Office of Advocacy's efforts to implement the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act, commonly known as SBREFA.

At earlier hearings before this Committee, I have testified about the need for SBREFA, the Congress intent of SBREFA, and its implementation. Today, I want to testify about my experience with the Office of Advocacy and its efforts to ensure that other Federal agencies comply with the rulemaking requirements of the Reg Flex Act, and my views on the discussion draft.

**Lessons from the Office of Advocacy's Role in Rulemakings**

Over the past five years, I have been involved in several rulemakings in which the Office of Advocacy actively participated. These include both high profile rulemakings like the EPA's rule revising the ozone and particulate matter NAAQS, and less controversial rulemakings. My overall impression is that the Office of Advocacy does a good job raising with the various federal agencies the deficiencies of the Reg Flex analyses prepared by these agencies. I have observed as the current Advocate, Mr. Glover, has pursued some of these issues to the highest levels of the executive in an effort to make the voice of small business heard. I believe we should thank Mr. Glover for those efforts.

However, I have also observed that the Office of Advocacy must pick and choose its battles. Part of this is due to resource constraints, which face any organization, but resource constraints alone are not the full story. As an office within the Small Business Administration, the Office of Advocacy is part of the Administration team. When other players on the Administration team propose regulations that run counter to the interest of small business or shirk their duties under Reg Flex, the Advocate faces conflicting pressures. Does his loyalty lie

with small business or the team? And even if his loyalty is truly with small business, each Advocate must consider the long-term effects of pushing too hard on behalf of small business.

As an “advocate from within,” the Office of Advocacy power depends to some extent on remaining part of the team. Will the other players on the administration team continue to agree to work with the Advocate in future rulemakings if the Advocate goes beyond what the administration considers to be “reasonable” advocacy for small business? Looked at from this perspective, it may be that the best interests of small business to occasionally pull some punches, that in the long run, the interests of small business generally will be maximized if the Advocate would not push too hard or too often for the interests of particular small businesses.

While this problem has been reduced by the enactment of SBREFA, which provides for the judicial review of agency compliance with Reg Flex, the problem has not been eliminated. Especially in high profile situations, the Advocate continues to risk a long-term loss of influence on the Administration team if he - or she - pushes the small business agenda beyond a certain point. The chief lesson that I have learned is that given the position of the Office of Advocacy, and its hybrid role as an independent advocate and a team player, there will always be tensions between the interests of small businesses affected by a pending rulemaking, and the long-term interest of the small business community in having an effective advocate in executive rulemakings.

#### **Comments on the Discussion Draft**

First Mr. Chairman, let me complement you and your staff on the work that has obviously gone into this effort. The draft clearly reflects many hours of research into the formation of other independent commissions and earlier examples of the transfer of functions between governmental agencies. There are many lessons to be learned from these examples, and the draft does an excellent job of incorporating that experience into this effort.

As to the restructuring of the Office proposed in the draft, I believe that with two important caveats, the enactment of this legislation could bring significant benefits to the small business community. I don’t believe we would see drastic changes overnight, but over the long term, I believe the benefits would be readily apparent. My two caveats: the first is adequate funding, and the second is finding the right people to serve on the Commission and its staff.

Let me elaborate my reasons in a little more detail. First, I believe that the structure of an independent commission will go a long way towards eliminating the conflicting pressures felt by the current Office of Advocacy. The discussion draft would provide the statutory independence for the Commission that the Office of Advocacy currently lacks. With its independence firmly established in statute, the Commission will be free to zealously advance the cause of small business in all rulemakings - subject only to resource constraints. By removing the advocacy functions from the Small Business Administration, the draft allows the SBA to focus on what it is good at while providing the Commission with a more focused mission.

Second, the draft establishes important new functions for the Commission. In particular, I believe that the authority to issue regulations governing compliance with the Reg Flex Act is particularly important. No one in the Federal government knows more about what is needed as part of a well-done Regulatory Flexibility Analysis than the staff on the Office of Advocacy. Agencies throughout the executive branch would benefit greatly from the experience of the staff in the form of government-wide regulations on compliance with Reg Flex.

Third, I believe that the transfer of the duties of the Regulatory Enforcement Ombudsman to the Commission is appropriate. The Ombudsman was established with great hopes by SBREFA in 1996. However, I must say that I have been disappointed by the effectiveness - or lack thereof - of the Ombudsman. I view this as a troubled program in need of reform. I believe the changes made by the draft would bring new life and energy into the position of Ombudsman as well as the Regulatory Enforcement Fairness Boards.

Lastly, I believe that the expanded rights of the Commission to file comments and participate in agency adjudications will allow the small business community's voice to be heard in areas where it has not been heard before.

While there are a number of minor issues that I would want to work on with staff prior to its enactment, overall I think the discussion draft is a big step in the right direction. I would urge you to introduce it and move for its early enactment. However, I want to reiterate that resources and people will be the keys to making a real success.

I don't know of any way for Congress to legislate the quality of the people who serve on the Commission and its staff, but I do want to focus on resources for a moment. First, I would suggest working with the Parliamentarian and the Appropriations Committees to ensure that the Commission is funded from the same Appropriations Subcommittee (Commerce, Justice and State) that currently funds the Office of Advocacy within SBA. This will minimize - but not eliminate - the need to find "new funding" for the Commission. Second, I would work to get a strong buy-in by the Appropriators to the concept of the Commission. Finally, I would consider whether any independent funding mechanisms could assist in providing the Commission with resources adequate to fulfill its mission.

Thank you very much for the opportunity to testify.